

No. 15714

United States
Court of Appeals
for the Ninth Circuit

TALON, INC.,

Appellant,

vs.

UNION SLIDE FASTENER, INC.,

Appellee.

UNION SLIDE FASTENER, INC.,

Appellant,

vs.

TALON, INC.,

Appellee.

Transcript of Record

In Five Volumes

VOLUME II.

(Pages 401 to 800, inclusive)

Appeal from the United States District Court for the
Southern District of California,
Central Division

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(Testimony of William A. Doble.)

Mr. Leonard S. Lyon: Well, it is perfectly consistent with the attitude of many courts to sustain some narrow claims and hold that some of the claims in the patent are too broad.

The Court: Are you contending that claim No. 1 is your broadest claim?

Mr. Leonard S. Lyon: I think so.

The Court: Are you contending it is good?

Mr. Leonard S. Lyon: I contend it is good if it is limited by construction to what claim 2 calls for.

I think if you read it the way your Honor read it just a moment ago it is too broad, but I think it is ambiguous and should be read in the light of the specifications and [236] then it becomes no broader than claim 2.

If you think there is anything inconsistent about that, the way to cure it is to hold claim 1 bad and claim 2 good, which would be perfectly consistent with what is done in lots of patent cases.

The Court: All right, go ahead.

Q. (By Mr. Mockabee): Let us take claim 2, Mr. Doble:

“Means for feeding a tape into a predetermined position.”

Is that not shown in Poux?

A. Yes, sir.

Q. “Means for feeding a metallic member toward that position”? A. Yes, sir.

Q. “Means immediately at that position for performing all operations upon the fed member to form slide fastener elements from the fed member

(Testimony of William A. Doble.)

and to attach the elements to the tape," the forming means including a base which you say Poux must necessarily have? A. Yes, sir.

Q. "A shaft carried by the base"?

A. No, Poux has some operating mechanism. I don't know whether it is a shaft——

The Court: Doesn't Poux talk about the use of a ram?

The Witness: He talked about—— [237]

The Court: I mean——

The Witness: A punch press.

The Court: A punch press?

The Witness: Yes, but they are hydraulic punch presses.

Mr. Leonard S. Lyon: I don't think we are making any point of the shaft, your Honor.

The Court: All right.

Q. (By Mr. Mockabee): A ram?

A. The Poux patent has a ram. It has a different ram from the Silberman ram structurally operationwise and resultwise. [238]

Q. But it has a ram?

A. It has a ram.

Q. It does not have, does it, a pair of eccentrics of small eccentricity spaced apart on the shaft?

A. No, sir.

Q. With the connecting rods from the eccentrics to each side of the ram?

A. The Poux patent does not have the last portion of claim 2 which you have read.

(Testimony of William A. Doble.)

Q. Is that not a common expedient in the punch press art?

A. No, I wouldn't say it is a common expedient in the punch press art. There are sheet metal shearing presses that have used eccentrics and eccentric rods, but I don't know of any punch presses in the zipper art that have used that prior to Mr. Silberman.

Q. Have you studied the patents of record and the histories of the two patents in suit?

A. Yes, sir.

Q. Are there no such assemblies shown?

A. I don't remember any in the zipper art. There are such assemblies shown in cutting, slicing sheet metal.

Q. Do not any of the Sundback patents show eccentrics and connecting rods for operating rams?

A. Do you mean spaced—a pair of them spaced on a shaft? [239]

Q. Any kind.

A. They show some kind of an eccentric and connecting rod, but they don't show a pair of eccentrics with small eccentricity spaced apart on the shaft, as I remember it.

Q. What advance in the art is there in using a pair over a single connecting rod and eccentric?

A. It tends to more accurately actuate the ram during its down stroke and its up stroke. It pulls it down more evenly so you get a more even operation.

(Testimony of William A. Doble.)

Q. Do you consider that a patentable improvement? A. I consider it an improvement.

Q. A patentable improvement?

Mr. Leonard Lyon: By itself?

The Witness: Taken by itself, I wouldn't.

Q. (By Mr. Mockabee): Thus far, except for the eccentrics and connecting rods we have recited substantially what is shown in the patent to Poux, is that not true?

A. No, I don't think we have, because we have only read a portion——

Q. I said as far as we have gone.

A. Yes, but when you read the means immediately at that position for performing all operations, that includes the mechanism of the entire claim, and those means are broken down as the base, the shaft, and things of that nature. And unless [240] you read the entire claim it doesn't mean anything. It is already included broadly in the statement of means immediately at the position for doing such and such.

Q. All right. We will continue with the claim. Next is cooperating means carried by the ram and the base and actuated entirely by the ram for forming and cutting elements from the member and attaching the elements to the tape.

Is there any distinction here between what is claimed and what is shown in the Poux patent?

A. Yes, there certainly is.

Q. What is it?

A. The difference is in the Poux patent the

(Testimony of William A. Doble.)

ram does not carry the means for actuating, as this element says, "and cooperating means carried by the ram and the base and actuated entirely by the ram for forming and cutting elements from the member and attaching the elements to the tape."

Now, as I have pointed out before, in the Poux patent the plunger——

The Court: I understand the point. The difference there is the words "actuated entirely by the ram."

The Witness: Yes. And that is an important feature and an important distinction between these two. It gives you the proper timing of a very high speed machine. And if you don't have that proper timing, you don't make commercially successful fastener stringers. [241]

Q. (By Mr. Mockabee): Are you familiar with Sundback Patent No. 1,331,884, which I shall hereafter refer to as '884?

A. Yes, sir, I have read that patent. I do not have it before me. I have a copy of it.

The Court: Does somebody have a book of patents that they are going to put in evidence so I can follow some of these patents?

Mr. Mockabee: Here is one you can refer to.

The Court: All right. Counsel has a copy of it here.

The Witness: I have the Sundback patent '884 before me, and I have just noted the dates thereon, and I believe this morning I said that this patent was prior to the Poux patent, and in checking the

(Testimony of William A. Doble.)

date I find that it came after the Poux patent, so my testimony this morning was in error in regard to including this Sundback patent as being prior to the Poux patent '017.

Mr. Mockabee: I'm afraid you are wrong.

Mr. Leonard Lyon: You are looking at the wrong patent.

The Court: '884 was issued February 24, 1920.

The Witness: Yes, this is prior to the Poux patent.

Q. (By Mr. Mockabee): Does the Sundback patent '884 contain an eccentric on a shaft and a connecting rod for actuating a ram?

A. Yes, sir. [242]

Q. And it also has a base, of course?

A. Yes, sir.

Q. Does it have means mounted on the ram for forming a slide fastener element?

A. Yes, sir.

Q. Does it have means on the ram for severing the element from the stock? If you refer to Fig. 4 and punch 22, and the description of it.

A. Yes—what was the question, please now?

Q. Does it have means carried by the ram for severing elements from the stock?

A. Yes, sir, it has means, but in this case the means punch an element out of a relatively wide ribbon, and in doing so do form a partially completed element. It is not a fully completed element.

Q. That severs the material of the element from the stock, however, does it not?

(Testimony of William A. Doble.)

A. Yes, sir, entirely from the stock.

Q. Does Sundback's '884 disclose cooperating means carried by the ram and the base and actuated entirely by the ram for forming and cutting elements from the member and attaching the elements to the tape?

A. It includes cooperating means, first, for punching out of a relatively broad metal strip 1, a partially formed element; then that element is pushed back into the opening [243] from which it was punched out. Then the next step is to punch out a bit of scrap material between the forward end of the jaws, so as to provide the opening between the jaws.

Those things take place during the time the element is progressed with the tape from which it was punched. The element has then the projections and depressions formed on it, and then there are a pair of jaws for actuating on the side of the strip 1 to press the strip 1 inwardly and thereby clamp the legs of the element onto the tape. The element has previously been cut, as I pointed out, from the strip, and therefore is not cut from the strip at the location at which it is mounted upon the tape. The closing wedges are actuated during the stroke of the ram.

Q. You have explained the specific distinctions or some of them, at least, between Sundback's '884 and claim 2 of Silberman. Is it not true, however, that Sundback discloses cooperating means carried by the ram and the base and operated or actuated

(Testimony of William A. Doble.)

entirely by the ram for forming and cutting the elements from the member and attaching those elements to the tape, regardless of the order in which they are done?

A. I wonder if I could have my own patent. I have it marked up so that I could read it a little better than this one.

Q. Surely.

A. Now may I have the question read, your Honor, please? [244]

The Court: Yes.

(The question referred to was read by the reporter, as follows: "Q. You have explained the specific distinctions or some of them, at least, between Sundback's '884 and claim 2 of Silberman. Is it not true, however, that Sundback discloses cooperating means carried by the ram and the base and operated or actuated entirely by the ram for forming and cutting the elements from the member and attaching those elements to the tape, regardless of the order in which they are done?")

The Witness: I would say no, that that is not found in the Sundback patent '884, because the element is not cut from the metal strip or blank 1 at the time that element is fastened onto the tape.

Q. (By Mr. Mockabee): Is that required by claim 2? A. Yes, I believe it is.

Q. Read from claim 2 where that particular function is required.

A. "and cooperating means carried by the ram

(Testimony of William A. Doble.)

and the base and actuated entirely by the ram for forming and cutting elements from the member and attaching the elements to the tape.”

The operation of cutting and attaching are simultaneously on that particular element that is being cut, in the Silberman construction; whereas that is not true in the Sundback [245] patent '884.

Q. Does the claim state that any of these operations shall be simultaneously performed by mechanism which is actuated simultaneously?

A. Well, that is the way I would understand the reading of that particular portion of the claim, knowing the Silberman structure, knowing the specification, and the reasons why he wants that particular organization of parts. So in reading the claim that is immediately the teaching that it gives to me.

Q. But it is not so stated in the claim?

A. Well, to me it is stated in the claim.

The Court: We are just quibbling. It is not there in so many words, and you read it into it by your interpretation, is that it?

The Witness: That is right. That is correct, your Honor.

The Court: All right.

Do you attach any significance in 2 to the language, “and means immediately at that position for performing all operations”? You heretofore said “immediately” meant in the general vicinity, and so forth.

The Witness: That is correct.

(Testimony of William A. Doble.)

The Court: Well, Sundback would have that done in the same vicinity, would it not?

The Witness: He would have it done in the same vicinity. [246] But in cutting them free of a strip many stations back, he has loose elements that are retained in little pockets in a broader strip, and the little elements are awfully tough to keep control of. He has lost control of that element immediately that he cuts it out of the strip.

That is what Mr. Silberman didn't do. He followed Poux on it.

The Court: That is your view on it, but that doesn't have anything to do with what I asked you about whether "immediately" means immediately at that position to do the various work.

The Witness: I believe it to mean in that limited vicinity.

The Court: Well, do you think Sundback does that in that immediate vicinity?

The Witness: No, sir, it does not. It cuts them off and loses control of them before he gets them to the position where he wants to clamp the legs on the tape.

Q. (By Mr. Mockabee): Does not Poux have that formation in the immediate vicinity?

A. Yes, he does. And it is the teaching of the method of the Poux patent that Silberman applied in his machine that made it successful.

Q. The apparatus of Poux for forming the elements is located in that immediate vicinity, is it not, and is so shown [247] in the patent?

(Testimony of William A. Doble.)

A. Yes, sir, it is.

Q. Refer to claim 40 of Silberman. Is it true that this claim contains substantially the general organization of claim 2 with the exception that it does not call for the eccentrics and connecting rods, and it does go more into the element closing jaws and their operating means? A. That is true.

The Court: Read that question and answer.

(Question and answer read by reporter.)

Q. (By Mr. Mockabee): Relative to the closing jaws and their operating means. What in your opinion is the patentability distinction between what is claimed in claim 40 and what is shown in Poux?

A. A patentable distinction I believe is the operating of the closing jaws during the down stroke of the ram so that two things are obtained.

One is that the metal strip on which the element is still attached is securely grabbed so you have it in close register.

The next thing is that during that down stroke of the ram the two closing jaws act to close the legs of the element about the tape so that you get the accurate location of the element on the tape while the strip from which the element is made is firmly clamped in a vise-like action to hold it in position, which is very essential in a high speed operation.

Now, operating the closing jaws from the ram eliminates a long chain of mechanism and makes the operation in very close time relation during the down stroke of the ram, which is only a $\frac{1}{8}$ th of an

(Testimony of William A. Doble.)

inch. You have to do all these things in $\frac{1}{8}$ th of an inch.

You have to close the jaws. You have to cut it off—that is close the jaws on the element and cut it off all in one-eighth of an inch. You don't have very much leeway.

Q. Now, the claim recites a pair of jaws on the base. Is that not true of Poux? [249]

A. Yes, that is true of Poux.

Q. And means on the ram for engaging the jaws to drive them into engagement with the element to close it? A. That I do not find in Poux.

Q. But we do find that in Silberman—in Sundback, '884, do we not?

A. No, we do not. We find means operated by the ram in '884, for engaging the side of the strip from which the element had been blanked and then put back into the strip.

The engaging elements do not directly engage the legs of the element as they do in the Silberman patent.

Q. But they are actuated by actuating means on the ram, are they not?

A. Yes, they are.

Q. The end result of the operation of the apparatus disclosed in Sundback is to close the jaws on the tape, is that not true?

A. That is one of the end results. You want to remember——

Q. I meant the jaw closing mechanism.

A. Yes, the jaw closing mechanism wants to

(Testimony of William A. Doble.)

operate to clamp the legs of the element onto the tape but it wants to clamp them on there with the element in a particular position.

Now, with the '88 patent, permitting a little element [250] to be carried along in a pocket in the tape, you have lost the necessary control which is very desirable.

The Court: Mr. Witness, you keep arguing the case. Judge Harrison says that expert witnesses he considers to be associate counsel.

I don't know but what that is about right in most cases.

The specific question was asked you and if you have to make an admission make it. This particular question was whether or not the purpose of the jaws in their operation in Sundback, was not to cause the legs of the element to close on the fabric?

The Witness: Was to close it?

The Court: He asked you if that wasn't the purpose.

The Witness: Yes.

The Court: And the answer is obviously yes.

The Witness: Yes.

The Court: But then you give me an argument why it doesn't work so well.

That is something that can be argued by counsel or asked you by counsel on redirect examination.

But it seems to me that an answer like that is obviously "yes" because he asked the purpose of it.

Now, I don't know of any other purpose that those jaws would have in Sundback, do you?

(Testimony of William A. Doble.)

The Witness: No, that is their purpose, your Honor. I [251] am sorry I was argumentative.

The Court: Don't take any offense at that.

The Witness: I didn't mean to be argumentative.

The Court: Don't take any offense because as counsel know I am inclined to be sort of outspoken which doesn't mean very much.

The Witness: I appreciate that, your Honor.

The Court: I am simply telling you what I am thinking about and then you can shoot at it.

I think an expert witness is of real assistance to a court in explaining how things operate so the court can understand the operation.

Of course legally, when we come to the question of whether it is novelty or patentable, a witness shouldn't even be permitted to testify on that.

So, somewhere in between what you can't do and what you clearly should do, namely, explaining the operation of the device and other matters which counsel ask you about is an undetermined area.

We will take our recess at this time. This is tedious work and we have been at it since 1:30.

Does counsel have anything to say before we adjourn? Did you have something, Mr. Lyon?

Mr. Leonard S. Lyon: No, your Honor. I was interested in your views of the province of an expert witness because [252] there is always a twilight zone.

Some judges let an expert invade that twilight zone further than some others do.

(Testimony of William A. Doble.)

The Court: When they invade it with me I don't pay any attention to them. It is a difficult thing, certainly. A witness can and should explain how something works. That is the first thing he should do. And then he has a right to give his opinion on the workability and so forth of a machine.

I have asked questions as to whether this was the work of a mechanic or whether in the alternative it would be invention, which is really not a proper question because that is what I have to decide.

Mr. Leonard S. Lyon: They shouldn't argue the case, I agree with you on that, but when you depart from testimony and get into argument in a situation like this——

The Court: It is hard to determine. I would like to see counsel in chambers for a minute before you leave tonight, just informally.

We will take a recess until 9:30 tomorrow morning.

(Whereupon, at 4:20 o'clock p.m. a recess was had until 9:30 o'clock a.m. Thursday, March 3, 1955.) [253]

Thursday, March 3, 1955, 9:30 a.m.

The Court: Call the case.

The Clerk: No. 10450-C Civil, Talon vs. Union Slide. Further trial.

Mr. Mockabee: If the court please, a copy of that memorandum to the court regarding settlement has just been received by counsel and defendant,

and we have not had an opportunity even to read it at this time.

The Court: All right.

Mr. Mockabee: Counsel would like to make just a few remarks at the present time, because of the apparent weight which has been placed upon the importance in the industry of the Silberman patent '793.

It is the firm conviction of defendant that Silberman is not the inventor of the patent in suit; that it was not the product of his ingenuity, and patentable or not, was the results of the efforts of one John T. Havekost of Long Island, New York, whose deposition is in this case.

There is also a release or assignment from Havekost to Silberman, which is not as claimed by the plaintiff a statement that Havekost was not the inventor, but is an assignment of what patent rights Havekost had to Silberman, which is not a disclaimer of invention on the part of Havekost.

The Court: If that were true, the Silberman patent would [256] be void?

Mr. Mockabee: Yes, sir.

The Court: Because it wasn't prosecuted under the name of the assignee, but by Silberman?

Mr. Mockabee: Yes, sir.

The Court: Is that the way you understand the law?

Mr. Mockabee: Yes, sir.

I have here a printed copy of an unreported case, a certified copy of which is being prepared and sent from the Southern District of New York, civil

action file No. 9-197, Conmar Products Corporation vs. Lamar Slide Fastener Corporation and David Silberman. This is a copy of the interlocutory decree rendered by Judge Woolsey, United States District Judge for the Southern District of New York, December 18, 1942. Suit was brought by Conmar against Lamar and Silberman for the infringement of certain Wintriss and Ulrich patents, and the court found that the defendant Silberman had appropriated trade secrets of the plaintiff, had hired former employees of the plaintiff to produce a machine which apparently was, according to its exact specifications, a duplicate of plaintiff's machine. [257]

The court further stated:

"Where the testimony conflicts with the foregoing findings, I have no hesitation whatever, in saying that I do not believe the testimony of the defendant David Silberman, the testimony on deposition of Henry Tibony or the testimony of Abe Ernest.

"I also think that Mr. Silberman has been conclusively established by the evidence here to be one of the most notable commercial pirates that has ever come before me."

In view of this finding of the Federal District Court there does not appear to be merely a little justification for defendant's claim that the Silberman patent in suit was not his invention in view of the supporting deposition of John Havekost, it is the alleged invention which was borrowed from Havekost and the prior art which defendant main-

tains is the so-called Silberman patent and that it is definitely invalid.

The decision of Judge Woolsey just referred to recites acts supporting his final statement that I quoted.

Over a period of approximately from 1937 to 1941, four years, which was during the 13-year period which plaintiff maintains was the period during which all this effort was produced to arrive at an apparatus which would successfully carry out the product of Poux, it would seem that the activities of Silberman during the years 1937 to 1941 would indicate that he was doing something else rather than studiously applying [258] himself to the problem of the Poux method.

The Court: I take it this is not evidence but sort of an opening statement as to your position, in order that we might know what you are shooting at as we proceed.

Mr. Mockabee: Not entirely, your Honor. I did it because the witness, Mr. Doble, has so repeatedly stated that the Silberman invention was such a world-shaking advance in the zipper art as produced by Silberman.

The Court: But this matter that has gone into the record can only be treated as sort of an opening statement. It is a little out of order.

Mr. Mockabee: Yes, I realize that but I wanted to say it at this time because of the repeated representations of the importance and value of the Silberman patent by the witness on the stand.

The Court: It would be understood that this was

just an opening statement made now instead of at the beginning of the case.

Mr. Mockabee: Yes.

The Court: Is that satisfactory?

Mr. Leonard S. Lyon: Yes, your Honor.

I might say that we have every reason to believe that Silberman was the inventor and we paid him accordingly.

We have evidence to meet any evidence that is put in the case to the contrary. Of course, the burden is on the [259] defendant to prove that Silberman was not the inventor and we will be prepared to meet any evidence they have.

And I might say that we don't have to depend on Mr. Silberman's veracity because we are in a position of having knowledge of this Havekost matter and did so at the time it went on.

We have Mr. Silberman's patent attorney here, who prepared the patent application for the Silberman patent, and he is in a position to meet any testimony that the defendant may have based on Mr. Havekost's claim.

The Court: All right. There is no evidence of any kind in this record so far concerning the statement of counsel.

Mr. Mockabee: That is correct.

The Court: Proceed.

WILLIAM A. DOBLE

a witness called by the plaintiff, having been previously sworn, resumed the stand and testified further as follows:

(Testimony of William A. Doble.)

Cross Examination—(Continued)

Q. (By Mr. Mockabee): Mr. Doble, I hand you three zipper chains which I shall mark a little more definitely but——

The Court: Let us mark them now for identification.

The Clerk: Defendant's Exhibits A, B and C.

(The objects referred to were marked Defendant's Exhibits A, B, and C for identification.) [260]

Mr. Mockabee: I have marked them A, B and C.

The Clerk: I will put tags on them later.

Q. (By Mr. Mockabee): The zipper chain I hand you now marked Exhibit A for identification, I will ask you if you can tell me on what type of machine it was made?

A. I am not sure that I can tell which type of machine this chain, Exhibit A, was made on.

Q. I hand you another strip or chain and ask you if you can identify the type of machine upon which that was made?

The Court: That is Exhibit B?

Mr. Mockabee: Marked Exhibit B for identification. [261]

Mr. Leonard Lyon: If the court please, I think we are wasting time. Whether the witness can tell from examining here in the court room what machine one of these zipper strings was made on, I don't think, is relevant or material to the action. I assume there are no tricks in it, but it is taking a lot of time.

(Testimony of William A. Doble.)

The Court: I think so, too.

If you are doing this to test the ability or the qualifications of this man as an expert, ordinarily an expert would want to probably make a study, use enlarging devices, and so forth. If you want to let him look at them and question him later, all right, but I think we are wasting time.

Mr. Mockabee: All right. But if he examines them, I would rather have him examine them only in the court room.

The Court: You have looked over B; can you say as to B?

The Witness: I can't say as to B, but I will say they were made on different machines. The formation of the zippers is different.

Mr. Mockabee: That will be all, then.

The Court: Let me see them.

(Exhibits handed to the court.)

The Court: Proceed.

Q. (By Mr. Mockabee): Mr. Doble, in the manufacture of zipper elements and applying them to a tape, is it not true [262] that it is necessary that they be applied in such a manner that they are aligned on one tape, rather exactly in the same plane, and also aligned and spaced so that they will exactly meet complementary elements on an adjacent strip? A. Yes, sir, that is true.

Q. And this requires a very fine and accurate control of the element, particularly during its final stages of formation and securing to the strip, is that correct? A. That is correct.

(Testimony of William A. Doble.)

Q. Have you carefully examined the machine, Defendant's Exhibit 5?

A. I have examined Plaintiff's Exhibit 5——

Q. Plaintiff's, I beg your pardon.

A. There are parts of it that cannot be examined very closely. That is, the shape of the dies and punches are hard to get at to see their particular form.

Q. Do you know whether Plaintiff's Exhibit 5, then, is an embodiment of the invention of the Silberman patent? A. Yes, sir, I do.

Q. How can you tell without having carefully examined it?

A. Because when I was at the Wilson plant in Cleveland, the dies from one of the machines was taken apart and we examined them at the plant.

Q. Not this machine, though, however? [263]

A. I don't know that the dies were from this machine.

Q. Then, you cannot identify Exhibit 5 as an exemplification of the Silberman patent?

A. Yes, I can.

Q. You just said you didn't know.

A. Well, I don't know the exact detail——

Mr. Leonard Lyon: If your Honor please, I object to counsel arguing with the witness, because that starts the witness arguing, and then we are off in a field we shouldn't be in.

The Court: All right.

How do you know?

The Witness: I can see enough of it to see that

(Testimony of William A. Doble.)

it closely resembles the punches and dies which I have examined closely, separated from the machine.

The Court: Well, you also looked at drawings, did you not?

The Witness: Yes, sir.

The Court: And sketches?

The Witness: Yes, sir.

The Court: Blueprints?

The Witness: Not blueprints of Plaintiff's machine, your Honor. I have examined the actual parts of the machine, and I have examined the drawings of the patent.

The Court: Didn't Mr. Lipson submit some sketches and [264] drawings of the accused device?

The Witness: Of the accused device, yes, sir, your Honor, I have examined the machine.

The Court: Weren't you talking about the accused device?

Mr. Mockabee: I was speaking of Plaintiff's Exhibit 5 in Judge Hall's court, the machine we have here.

The Court: That is a plaintiff's machine?

Mr. Mockabee: Yes, sir.

The Court: I see. All right. Go ahead.

Q. (By Mr. Mockabee): I hand you a die punch to be marked——

The Court: It will be marked D for identification.

(The exhibit referred to was marked Defendant's Exhibit D for identification.)

Q. (By Mr. Mockabee): ——D for identifica-

(Testimony of William A. Doble.)

tion, and ask you if that is the type of punch which is used in the Silberman machine.

A. It is the type of punch. It differs in having the notch cutting die parts in it.

Q. They are not present in the Silberman machine? A. No, sir, they are not.

The Court: When you talk about the Silberman machine, what do you mean—a machine built pursuant to the Silberman patents? [265]

Mr. Mockabee: I wasn't clear there. I was going to ask him both.

Q. The Silberman machine of the patent.

A. The Silberman machine of the patent does not have the side cutting punches or dies. It cuts the little notch out as shown in Plaintiff's Exhibit 4, plate 3.

The Court: I still am in doubt. When you talk about the Silberman machine of the patent, do you mean if a machine were built pursuant to the patent—is that what you are talking about?

Mr. Mockabee: Disclosed in the patent.

The Court: As disclosed in the patent? Is that what you are talking about?

The Witness: Yes.

The Court: We have no machine that has been built pursuant to the patent, do we?

The Witness: Not in court, your Honor. As I understand it, there have been machines built identical to the Silberman. In fact, the drawings in the patent were made from an actual machine.

The Court: But the machine that is Exhibit 5

(Testimony of William A. Doble.)

that we saw in Judge Hall's court, there has been no identification of it that I know of except that it is one of plaintiff's machines. Is that machine supposed to have been built pursuant to the disclosures of the Silberman patent? [266]

The Witness: It was built, your Honor, and includes the essence of the invention, and the arrangement of the dies, the cut-off, and the mode of operation, it includes the inventive concept of the Silberman patent. Structurally there are some differences. For example, they have the parallelogram of springs for supporting the ram, instead of guides for supporting the ram during its reciprocation.

Mr. Mockabee: Your Honor, I don't think that the witness has shown that he has any knowledge of his own as to what machines were built and how they were built. He has seen this machine in court. He doesn't know that machines were built and the patent drawings made of them from his own personal knowledge, from anything that I have heard.

The Court: Well, it will go to the weight of his opinion.

Q. (By Mr. Mockabee): Mr. Doble, is a die punch of that type used in defendant's machines?

A. Yes, sir, it is.

Q. But it is not disclosed in the patent, is that true?

A. Well, the punch is disclosed in the patent.

Q. Of that type?

A. Well, I would say of this type, but there is

(Testimony of William A. Doble.)

a slight addition, an additional cutting surface formed on this particular die. [267]

Q. To produce what?

A. To produce the side cuts in the metallic strip.

Q. You think that the side cuts, then, are slight changes in the machine and the operation?

A. Yes, they are. The machine works just as well whether you have them or don't have them, as far as the machine operation is concerned.

Q. Is the tape tensioner of defendant's machine the same as that disclosed in the Silberman patent?

A. There are two tensioners. Do you mean the one below——

Q. The one below the point where the elements are attached.

A. Yes, sir, they appear to be practically the same.

Q. What in the Silberman machine, Exhibit 5, is present to maintain the end element in its proper position preparatory to being applied to the tape at the moment it is cut off from the strip of stock?

A. At the moment it is cut off it is already securely fastened to the tape and no longer needs any supporting means. But just at the instant it is finishing the cutting action it is still supported by the handle, as well as being supported and positioned by its engagement with the tape.

Q. Is there not a tendency in cutting off a piece of metal of that type for the free end to rise where the cut is [268] vertically downward?

(Testimony of William A. Doble.)

A. Yes, sir, there is a tendency, such a tendency.

Q. And the tape is flexible, is it not?

A. The tape is flexible, held under tension.

The Court: You are talking about the strip or the tape?

Mr. Mockabee: The tape upon which the element is applied.

The Court: All right.

Mr. Mockabee: The woven cloth tape.

The Court: All right.

Q. (By Mr. Mockabee): And the strip is somewhat resilient, isn't it?

A. The strip, you mean——

Q. Lengthwise.

A. I don't understand. You mean the piece of metal?

Q. The strip has stretch?

A. Do you mean the tape or the strip?

Q. Pardon me. The cloth tape.

A. The cloth tape can be stretched under sufficient pull.

Q. Is there anything in Exhibit 5 which positively holds the element as it is being cut, other than the flexible tape?

A. Yes. The handle portion of the metallic strip is being held by the cutting die and by the head forming die, and [269] the flat surface of the cutting die tends to hold the element in its position during the cutting and attaching operation.

Q. What flat surface of the cutting element?

(Testimony of William A. Doble.)

A. The flat top surface of the cutting die against which the element is being cut.

Q. Does that bear down against the flat surface of the element?

A. No, but the punch of the cutting element bears down upon the element at that point and the surface, the cutting surface of the die, is circular so that the pressing down effects a curve which would tend to hold that element down flat on the top surface of the cutting die.

Q. But there is still a free end which is the end opposite to that from which the element is being cut from the handle or rod or strip, is that not true?

A. The legs of the element are at that time engaged by the closing jaws and being forced on to the bead of the tape so that they are being clamped on to the tape simultaneously with the cutting operation so that you have not only the force of the closing jaws against the legs of the element but also have the locking engagement of those jaws with the bead of the tape which tends to hold that element in correct register, as well as the force of the cutting punch downwardly to hold the element on the anvil of the cutting die.

Q. And these alone combine to hold the element in its proper position, is that correct?

A. Plus the holding effect of the head forming die to [271] the feed roller side and of the metal strip.

(Testimony of William A. Doble.)

They all co-operate to hold it in alignment during the attaching operation.

Q. Are you aware of any other machines for manufacturing and applying slide fastener elements which are in extensive commercial use other than the Silberman machine?

The Court: By the "Silberman machine" I am still in doubt about this. Do you mean machines that the plaintiff has which the witness said embodies the principles but are not detailed. Just what do you mean?

Mr. Mockabee: Well, I will exemplify it by Plaintiff's Exhibit 5 and Defendant's machines—that type of machine.

The Witness: May I have the question?

The Court: Read the question.

(Question read as follows: "Q. Are you aware of any other machines for manufacturing and applying slide fastener elements which are in extensive commercial use other than the Silberman machine?")

The Witness: I don't quite understand what you mean by "aware."

Q. (By Mr. Mockabee): Do you know of any— A. Do you mean personally?

Q. Yes. A. Observed them? [272]

Q. Yes. A. No, I have not.

Q. You have heard of no other machine?

A. You said "aware of." I asked you if you meant by that to personally see them.

Q. Do you know anything about them? Have

(Testimony of William A. Doble.)

you heard of any other machines? Have you seen any other machines?

A. I have heard discussions.

Q. Have you seen pictures of them or any representation of them?

A. I have heard discussions of other machines. And there are a number of other machines. I don't know just what you mean. Could you make that more clear?

Q. Is the Silberman machine—this Silberman type of machine that we have been speaking of here, is that the only machine on the market for making zippers?

A. Well, first of all I don't know what machines are on the market.

Q. I merely want to know if you know and if you can tell me.

A. I don't know that the machines are on the market. I thought they were usually made by the zipper manufacturers.

Q. In the zipper industry—let me put it that way then.

A. Well, I know of them from having talked about the [273] zipper industry with a number of people associated with that industry.

Q. What machines do you know of?

A. I know of the—now, you mean machines that include the features of the invention or just general machines?

Q. Modern high speed zipper manufacturing machines.

(Testimony of William A. Doble.)

A. Well, the only ones I know of are the Silberman type of machine.

Q. That is the only one? A. Yes, sir.

The Court: And the accused device?

The Witness: Yes, the accused device, your Honor, both of which I have seen in operation and have examined and studied.

Mr. Mockabee: Your Honor, I wonder if plaintiff would mind having some few parts of his Exhibit 5 removed so that I can ask Mr. Doble questions about them?

The Court: The machines in the other courtroom?

Mr. Leonard S. Lyon: We will be glad to cooperate in anything that will be helpful. I don't know how far you can go without a mechanic.

Mr. Mockabee: We won't dig too deeply. I understand Mr. Lipson can do what we want in three or four minutes.

Mr. Leonard S. Lyon: Mr. Lipson is an excellent mechanic. Anything he undertakes to do we will rely on it [274] as being all right.

The Court: Are you near the end of your cross examination?

Mr. Mockabee: Fairly near, your Honor.

The Court: Do you want to do that now or later?

Mr. Mockabee: I would rather do it now if you don't mind. There may be some further questions in connection with that. It will not take very long.

The Court: How do you propose to do this?

(Testimony of William A. Doble.)

Mr. Mockabee: I want to ask Mr. Doble to compare certain parts of Exhibit 5 with the disclosure in the Silberman patent.

The Court: You want to do it right now?

Mr. Mockabee: When it is convenient to the court.

The Court: Well then, we will have to recess and adjourn to the other courtroom, is that right?

Mr. Mockabee: I am afraid we will.

The Court: Do you want the reporter there?

Mr. Mockabee: Yes. This would be testimony, or would it be proper for us to repair to the other courtroom and make the inspection and then come back and have Mr. Doble testify as to it.

There are not a great number of things to go into. Would that be all right, Mr. Doble?

The Witness: Yes, that is all right with me.

The Court: I will do it either way. We will do it right there on the scene if you prefer to do it that way. [275]

Mr. Mockabee: Then we will not need the reporter.

The Court: We will take a recess and go to the other courtroom.

It will take only about five or 10 minutes to take the parts off of the machine that you are interested in.

We will take up that matter in the back part of Judge Hall's courtroom near the machine. You can show the witness what you want him to look

(Testimony of William A. Doble.)

at and then you will be prepared to ask him questions.

Mr. Mockabee: Yes. [276]

Q. (By Mr. Mockabee): Mr. Doble, you have just witnessed the removal of certain parts from Plaintiff's Exhibit 5, a machine which we have called in this proceeding a Silberman type machine.

A. Yes, sir.

Q. I hand you for inspection——

The Court: We will have to identify these as we go along by exhibit numbers.

Mr. Mockabee: These are parts of Exhibit 5.

The Clerk: We can mark them as 5-A, 5-B, 5-C, and so forth. They belong to Exhibit 5.

Mr. Mockabee: There are about five parts.

The Court: My only point is this: We can identify them as we go along, but the clerk will later on have difficulty finding out which is which.

Mr. Leonard Lyon: These parts are not being made separate exhibits?

Mr. Mockabee: I wouldn't think so. They are parts of Exhibit 5. If we could just identify them in some way.

Mr. Leonard Lyon: You had better describe them, I think, because if they got back into the machine there would be no way of finding them unless you describe them.

Mr. Mockabee: I think they can be described.

The Court: You don't want them tagged separately, because you want to put them back in the machine, is that correct? [277]

(Testimony of William A. Doble.)

Mr. Leonard Lyon. Yes.

The Court: Then the witness will describe each one of them as he looks at them, and we will not give them numbers, it being understood they are all parts of Exhibit 5 now in evidence.

Q. (By Mr. Mockabee): I hand you a T-shaped member and ask you if you identify it and its relationship in Plaintiff's Exhibit 5.

The Court: It is approximately 3½ inches long and a little over two inches wide at the T.

The Witness: Yes, sir.

The element which I have in my hand is referred to as the punch block. It is the block in which the cut-off punch and the head forming die are nested for assembly onto the ram of the machine and means provided at the top surface of the block, that is the T surface of the block, upper T surface of the block, for adjusting the position of the punches in this punch holding block.

Q. (By Mr. Mockabee): What is the adjusting means?

A. The adjusting means are Allen type set screws, headless Allen type set screws, which extend down through the T of the block and engage a short filler block, which in turn acts as a stop for positioning the cutting off punch in proper position for actuation.

The Court: When that T-shaped object is in Exhibit 5, [278] it is in the position with the T uppermost?

The Witness: That is right, your Honor.

(Testimony of William A. Doble.)

The Court: And the slot in the stem extending vertically of the T-shaped object is the slot in which the cut-off tool, the punches, and so forth, are inserted?

The Witness: Yes, your Honor, they are nested in it.

Mr. Leonard Lyon: To complete your identification, will you compare that with No. 314 in the Silberman patent?

The Witness: Yes, sir. In Fig. 21, which is the front elevational view of the ram——

The Court: Fig. 21?

The Witness: Yes, Fig. 21, your Honor.

Mr. Charles Lyon: Fig. 64.

The Witness: I wanted to point out its relationship on the ram first, and then I will go to Fig. 64.

The punch block is mounted on the front face of the ram in a suitable opening, and is indicated at the central portion of the figure to the upper end of the central portion and is designated by the numeral 314. I can point it out, your Honor.

The Court: Is it also 326?

The Witness: 326 are the clamping plates that hold the block onto the ram.

If we turn to Fig. 64, the punch block is indicated by the numeral 314, and is a sectional view through the member, [279] and illustrates the manner in which the punches, that is, the cut-off punch 322 is mounted, and next to it is the head forming punch 324. There are long adjusting screws indicated. The adjusting screw for the cutting off

(Testimony of William A. Doble.)

punch is identified by the numeral 336; the adjusting screw for the head forming punch is designated by the numeral 338.

Mr. Leonard Lyon: By reference to the part numbers on this Fig. 64, what are the parts that you have just exhibited to the court?

The Witness: They are the parts, 314, and a modified—that is, they are shorter adjusting screws, 336 and 338, the cut-off punch 332, and the head forming punch 324, all shown in section. The T-shaped part is designated by the numeral 332, and the cut-off punch I thought I mentioned as 322.

The Court: The punch for making the projection and indentation is 324?

The Witness: 324, your Honor.

The Court: All right. Let's go ahead.

Q. (By Mr. Mockabee): On the T-shaped member just described, what is the rectangular plate on the top central portion thereof?

A. It is for the purpose of holding the two Allen type headless set screws which act to locate the cutting off and the head forming punches in proper relationship in the block. They are different from the Fig. 64 in that they are short, [280] and spacer blocks are provided to extend down to engage the upper end of the cut-off punch, and a longer spacer block in this case has been provided so it will engage the upper end of the head forming punch. Merely a substitution of the elongated block. Instead of making the screw

(Testimony of William A. Doble.)

sufficiently long to take care of that adjusting feature.

Q. Do you know the manner in which the rectangular locking plate at the top of the T functions?

A. It doesn't function during the operation of the machine. It is only used in setting the machine up to properly position the punches with relation to the T-shaped block.

Q. Do you know its function in relationship to the adjusting screws?

A. Yes, the adjusting screws pass through it and are threaded in it in the same manner that the adjusting screws are threaded in the T-shaped end 332 of the punch block. [281]

Q. How does that lock the adjusting screws?

A. It doesn't lock the adjusting screws. They are just threaded through it.

Q. I hand you a block about an inch and a quarter in length, slightly less in height and approximately three-quarters of an inch in thickness. Would you describe that, please?

A. The block which you handed me is the die block and contains the co-operating members, which members co-operate with the ram.

The block is mounted in the base and during the operation of the ram the punches co-operate with certain dies formed in the die block for properly forming the recess in the metallic strip for making little side cuts in the metallic strip and for cutting off the metallic strip.

(Testimony of William A. Doble.)

There is a series of dies mounted in the die block for the purpose I have just stated.

The forward end of the block—that is the end of the block that has the “V”-shaped opening or slot—the “V”-shaped slot is provided for the passage of the tape past or across the end of the metallic strip to which the element is fastened during the leg closing operation.

The Court: May I see it?

(Object handed to the court.)

The Court: There is a piece here that has a tendency to fall out of the bottom. [282]

The Witness: Yes.

Q. (By Mr. Mockabee): Referring to the die housing which you have just described and to the “T”-shaped punch holder and the forming punch, is it not true that considerable nicety of designing and machining is required for die elements of the size of these?

A. Yes, it certainly requires a very high degree of mechanical skill to produce this particular structure.

Q. In your opinion would one who designed or conceived such a construction be required to have considerable knowledge of work of this type?

A. He would be better fortified in designing it with that knowledge but it would not be necessary.

A great many designers of very intricate machinery wouldn't know how to run a lathe if they were forced to do so.

Q. But knowledge of a considerable high degree,

(Testimony of William A. Doble.)

either practical or educational, would be required, is that not true?

A. Do you mean to design or to manufacture it?

Q. To design it. A. (No answer.)

Q. And manufacture.

A. Well, those are two different things. As I say there are a lot of designers who design very intricate machinery that couldn't make it to save their lives. And there are a lot of people who can make very intricate pieces of [283] machinery that couldn't design them.

Q. Would you say that to even conceive such a construction prior to final engineering would require considerable knowledge of machines of this type?

A. Yes, yes. I think a person designing that should have some knowledge of machines of this type.

Q. Here is another smaller element of approximately an inch long——

A. May I interrupt just a moment so we may identify this in the patent. It is identified by the numeral 408.

The Court: You are talking about the former piece?

The Witness: I am talking about the die block that goes down in the base.

The Court: All right, 408.

The Witness: 408.

Mr. McCoy: 408?

(Testimony of William A. Doble.)

The Witness: The die block—excuse me, it is 340.

The Court: In Figure 64?

The Witness: I was looking at Figures 23, 24, 25, 26 and 27. They all show various positions and sides of the die block 340.

The Court: 340?

The Witness: 340, yes, your Honor. The figure 340 also appears in Figure 65 which is the top plan view of the die block with the punches or dies assembled in the die block. [284]

Q. (By Mr. Mockabee): I hand you another element approximately an inch long by slightly less than a quarter of an inch wide and roughly one-eighth of an inch thick. Can you describe that?

A. Yes, I can. It is the head forming die which is designated in the patent by the numeral 324 in Figures 58, 59 and 58a.

It has a head forming depression 364 at each end.

The Court: Each end?

The Witness: Each end, your Honor. The purpose for that is when one is worn out you can reverse it and it is so illustrated in the figures of the patent which I have referred to.

Q. (By Mr. Mockabee): Referring to the parts of Exhibit 5 which you have thus far described, are comparable elements found in the Sundback patent '884?

A. I find in the Sundback patent '884 a die

(Testimony of William A. Doble.)

block which contains a shearing punch and a head forming punch and I find a die block 10 in which there are die operations for forming a blank element, complete element or a blanked out element and also a recess 399 which co-operates with the head forming punch 38 for forming the recess and projection on the zipper element.

Q. Isn't the disclosure in the Sundback patent similar in its general functional components to those elements [285] described as taken from Plaintiff's Exhibit 5? A. No, sir.

Q. In what way?

A. In the Sundback patent '884, the punch——

The Court: What plate are you looking at?

The Witness: I am turning to it now, your Honor. The punch 22 in Figure 4 of sheet 4.

The Court: Figure 22?

The Witness: The punch is 22, your Honor.

It punches out an entire element as illustrated in Figure 19 on the last sheet of the drawing.

Q. (By Mr. Mockabee): Mr. Doble, you probably did not understand my question. I do not mean as to specific individual elemental structures. I mean does Sundback show a punch holder which is vertically movable? A. Yes, sir.

Q. Does he show punches carried by the holder?

A. Yes, sir.

Q. Does he show a die block beneath the punches? A. Yes, sir.

Q. With this mechanism of Sundback does he form heads and projections? A. Yes, sir.

(Testimony of William A. Doble.)

Q. Does he cut out an element from a strip of stock?
A. Yes, sir. [286]

Q. I hand you another part removed from Plaintiff's Exhibit 5. It is approximately two and three-quarter inches long by a quarter of an inch wide and one-eighth of an inch thick with a prong on either end of it.

Can you describe its function in the machine?

A. No, I cannot. I don't know exactly where it was in the machine when it was disassembled. I didn't see it come out and I don't recognize it as any part of the machine that I have seen before.

Q. Did you observe the removal of parts sufficiently to know whether or not it was closely associated with the parts removed and previously described?

A. No. The only thing I know about it is it fell out as one of the members was being taken out and I don't remember—I didn't see where it was and where it fell from so I don't know where it was located.

Q. In other words it was in the general location of the removed part?

A. Oh, yes, yes. It was there all right.

Q. I hand you two complimentary parts approximately two inches long and one inch wide and five-eighths of an inch thick as a unit, one of which is slidable in a channel formed in the other. Will you describe their function, please?

A. Yes. The movable member which has a projecting pin is the member that causes the legs 466

(Testimony of William A. Doble.)

of the element to be [287] squashed to the bead of the tape—that is one acting on each side of the element.

The Court: Movable? The movable member is the jaw.

The Witness: Yes, the movable member is the jaw 524. And the little pin I referred to is the pin that the spring engages the jaw to return it to its retracted position after a clamping operation.

Q. (By Mr. Mockabee): You stated that you do not recall or know the function of the two and three-quarter inch strip of metal which was removed from the machine.

Then do I understand it to mean that this is not found in the Silberman disclosure?

A. I don't recognize it as being found in the Silberman disclosure.

Q. Regarding the jaw closing elements which you just described, will you describe the angle of the cam surface on the movable member?

The Court: About 45 degrees, isn't it?

The Witness: I think it is a little steeper than 45, your Honor. Well, we will say 45 degrees. That is about as near as I can guess at it.

Q. (By Mr. Mockabee): Approximately 45?

A. Yes.

Q. What would happen regarding the function of this element if that angle were made considerably less than 45 [288] degrees from the bottom of the member?

(Testimony of William A. Doble.)

A. From the bottom of the member? You mean a flatter angle?

Q. Yes.

A. The member would be moved further during the down stroke of the ram.

The greater the angle from the horizontal the less movement will be obtained during the down stroke of the ram providing, of course, that the ram plate—cam plate 498 has a complimentary angle to the angle of the die, forming die closing jaw.

The Court: May I see it just a minute. This operates in the manner in which I am now holding it, this being the jaw and this being the cam.

The Witness: Yes, your Honor.

The Court: When the cam comes down the jaws move out?

The Witness: Yes, your Honor.

The Court: In fact you can see on the edge of it patterns of the contact with the legs of the zipper?

The Witness: That is correct, your Honor.

Q. (By Mr. Mockabee): And correlary to what you have said about a reduction of the angle of the cam surface, if it were increased it would then shorten the distance of travel of the jaw closing member? A. Yes, sir, that is correct. [289]

Q. Then is it not true that the angle of the cam surface must be critically related to the action of the element severing punch in order to produce cut-off of the element and clamping of the element to the tape in the manner described in the Silber-

(Testimony of William A. Doble.)

man patent? A. No, I won't agree to that.

Q. If the angle of the closing member is changed to the point where the movement of the closing member is shorter, how would that change the relationship of the clamping to the action of the cutting punch?

A. May I have that read, please, your Honor?

The Court: Read it.

(Question read by the reporter.)

The Witness: Well, the action would take place later, providing—that is, the closing action on the jaws would take place later, providing you didn't make a corresponding adjustment to the position of the cut-off punch.

I might say at this time that the angular degree to which the cam surfaces can be made is somewhat limited. If you make it much flatter than 45 degrees, you may run into mechanical troubles in having the cam faces break down, because there would be too much pressure applied to the surfaces, where if you could make it a steeper angle there would be less destructive thrust against the surfaces, and therefore, normally, cams of this type do not go below a 45 degree [290] from the horizontal, that is, the contact surfaces are very rarely made below a 45 degree angle.

Q. If the angle were greater, that difficulty would not occur, however?

A. That would not occur. The closing jaw would move a less distance with each stroke of the ram.

(Testimony of William A. Doble.)

Q. And it would change the relative timing of the closing of the jaws and the shearing action of the cutter, is that not true?

A. It is not true as broadly stated, because if you made a change here, undoubtedly you would make a change in the location of the cut-off punch.

Q. Then, they are directly critically related, is that not true?

A. Well, I will say that they are directly related. There is a range of leeway between the action of one and the other.

Q. Do you think it would require much change of angle to produce a situation wherein the shearing or cutting of the element would occur prior to any clamping action on the tape?

A. I don't know that that would be attained that way.

Q. You just stated that if you changed the angle of the cam surface you would have to then adjust your cutting punch correspondingly. [291]

A. I didn't say you would have to. I would say it would mostly likely be a desirable thing to do.

The Court: I thought we agreed that the clerk was not going to mark those.

The Clerk: I could keep them in a little box until they are to go back into the machine.

Mr. Mockabee: It is up to the plaintiff. It is his property.

The Court: Counsel agreed on no markings. They are part of Exhibit 5 and they have been described.

(Testimony of William A. Doble.)

The Clerk: I have seven separate parts. Is that right?

Mr. Mockabee: Is it agreeable to keep those disassembled until Mr. Lipson testifies?

Mr. Leonard Lyon: Until Mr. Lipson testifies, if he wants to use them, I suggest they keep them in a box.

Mr. Mockabee: Yes.

The Court: All right. There are seven of them, but they were not all identified.

Q. (By Mr. Mockabee): Mr. Doble, in the Silberman machine, Exhibit 5 of plaintiff, is there anything on the closing jaws which operates upon a zipper element after the element has been attached to the tape and severed?

A. I lost the first part of that question, Mr. Mockabee. I am sorry. Could I have it read?

The Court: Read it.

(Question read by the reporter.)

The Witness: No, sir, there is not.

Q. (By Mr. Mockabee): Is there anything in the disclosure of the Silberman patent which functions in this manner?

A. Yes, there is. As I have shown on my chart, Plaintiff's Exhibit 4, plate 2, the surface marked 560, which is the upper rectangular pad on the engaging end, that is the zipper element engaging end of the jaw 524 engages the element after it has moved up out of the attaching station, it is about the fourth element above the attaching station, that

(Testimony of William A. Doble.)

little rectangular surface 560 engages the element and gives it a slight additional forming.

Q. Then the forming is finally completed at that point, is it not? A. Yes, sir, that is correct.

Q. I believe you testified that there were several forming stages ahead of the attachment of the element to the tape, is that not true?

A. By "forming," do you mean the manufacturing phases of the element?

Q. Yes. A. Yes, sir, that is true.

Q. And four stages or stations which must be occupied [293] before the element is finally formed after it is secured to the tape, is that not true?

A. Yes, sir, that is generally true. It is a question of whether you have four stations of the tape, but I would judge you would. You have a station at which the element is cut off and the head is to be formed—no, I think there are three stations before the clamping, and four stations after the clamping, to be a little more accurate.

Q. Then, including the clamping, there would be a total of eight stations through which the element passes to its station of final completion, is that correct?

A. Well, I would say seven or eight. I would prefer seven stations to eight.

Mr. Mockabee: That is all, your Honor.

Mr. Leonard Lyon: That is all, Mr. Doble.

The Court: Step down.

Mr. Charles Lyon: Plaintiff now calls Mr. Ralph Meech. [294]

RALPH MEECH

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Ralph E. Meech.

Direct Examination

Q. (By Mr. Charles Lyon): What is your occupation, Mr. Meech?

A. I am employed by Talon, Inc., as assistant secretary and patent counsel.

Q. When did you first become employed by the Talon Company, or as it was then known, Hookless Fastener Corporation?

A. Upon my graduation from Purdue University in the summer of 1930.

Q. What were you employed as by the Hookless Fastener Company in 1930?

A. I was employed originally as patent draftsman.

Q. Did you become assistant resident patent counsel shortly thereafter?

A. I did, and I assisted the resident counsel in keeping a classified patent list of all zipper art.

Q. As part of your duties as assistant patent counsel, [295] did you do what we call in the patent business "page the Gazette"?

A. That is correct.

Q. Tell the court what you mean by paging the Gazette?

(Testimony of Ralph Meech.)

A. Well, first maybe the court would like to know what the Gazette is.

The Gazette is published weekly by the United States Patent Office, and in the Gazette are those patents which have been issued for that previous week or that week.

Q. You mean the abstracts of those patents?

A. That is correct. And they give a picture, show a picture of the particular invention, together with supposedly the broadest claim allowed in the corresponding patent. It was my duty to page that weekly, which came out on a Tuesday, and to determine and mark what patents were issued relating to the zipper industry, our own patents as well as our competitors.

Q. So you began paging the Gazette and noting patents issuing with respect to slide fasteners and manufacturing machines and the like, in 1930. Have you continued that to the present day?

A. Yes, I have.

Q. So, to summarize your testimony, you have paged the Gazette with respect to zipper patents for a period of 25 years, is that correct? [296]

A. That is correct.

Q. I believe you left Talon, Inc., for a period of years, is that correct?

A. That's right, I left the employ of Talon in 1937, principally to go to law school. I then was employed, though, by United States Steel Corporation in their patent department as a patent attorney.

(Testimony of Ralph Meech.)

Q. Did you page the Gazette for the United States Steel Corporation?

A. That was also one of my duties.

Q. While you were paging the Gazette for, I presume, steel inventions, did you as a matter of curiosity continue your examination concerning slide fastener patents?

A. Yes, I did. The zipper field is very intriguing and gets into your blood, and naturally it is your first love, and you keep, of course, abreast of the art.

Q. In 1944, if my notes are correct, you returned to Talon, Inc.?

A. That is right.

Q. And you became chief resident patent counsel, is that correct?

A. That is right.

Q. And you have been that and assistant secretary of the corporation since, which is your present capacity?

A. That's right. [297]

Q. As resident patent counsel for Talon, Inc., have your duties included the supervision—preparation, negotiation and supervision of license agreements?

A. Yes, they have.

Q. Has it been part of your policy in that job to generally keep yourself familiar with the operations of your competitors insofar as you were able to?

A. Yes.

Q. Did you ever meet David Silberman?

A. Yes, I met David Silberman the first time in the spring of 1944, shortly after I came back with Talon.

Q. Where did you meet Mr. Silberman?

(Testimony of Ralph Meech.)

A. In his office and place of business on Cooper Square, New York City.

Q. What was the occasion of meeting Mr. Silberman?

A. The occasion was, he was one of our competitors, and he at that time, we thought, was possibly using some of our patents in his manufacture of zippers, and we were invited by him to inspect his premises and his machine. When I say "we," at that time I was with my former—how shall I say it—my predecessor, Roland S. Kelly. [298]

Q. (By Mr. Charles W. Lyon): Did he display to you at that time a machine? A. Yes, he did.

Q. Was it a complete and operating machine?

A. He displayed three complete operating machines and a fourth was being built as I recall.

Q. Do you recognize—will you describe that machine if you can?

A. That machine was substantially the machine that is disclosed in the Silberman patent here in suit.

Q. Do you mean by that that you recognize the drawings of the '793 patent in suit as being a reproduction as far as draftsmen were able to do so, to the machine you saw in the spring of 1944?

A. That is correct.

The Court: Now, you said three complete machines and a fourth one. Which machine or were all of them substantially the same as '793?

The Witness: All were identical, your Honor, with '793.

(Testimony of Ralph Meech.)

Q. (By Mr. Charles W. Lyon): Did you take the position at that time that those machines which you saw in the spring of 1944 were infringements of the Poux '017 patent?

A. Yes. In my opinion they were and that was the reason we were on the premises.

Q. Did you negotiate a license between Talon, Inc. [299] and Mr. Silberman giving him a license to manufacture those machines under the '017 patent?

A. We did.

Q. I have handed you or made available on the desk in front of you defendant's answers to interrogatories—I mean plaintiff's answers to interrogatories propounded by the defendant.

Those answers include numerous documents which at the pretrial it was stipulated could be received without further foundation.

Will you look in there and see if you find a copy of the first Silberman-Talon agreement?

A. Yes. That was an agreement dated July 16, 1945, not only between Talon, Inc. and David Silberman but together with Kap-Tin Development Corporation.

Q. Was this agreement which is marked Exhibit 8 to Kap-Tin——

The Court: Wait until I find. You said July 16, 1945?

It is at page 56. It is marked Exhibit 1 and not Exhibit 8.

Mr. Charles W. Lyon: I have an agreement dated April '44 between Kap-Tin——

(Testimony of Ralph Meech.)

The Court: Give me the page number in the deposition or in the interrogatories.

Mr. Charles W. Lyon: Apparently mine aren't paged. You [300] are correct, your Honor, it is page 57. That is what I was referring to—what the witness was referring to.

The Court: What do you want to do? Do you want to separate these or refer to them merely by reference?

Mr. Charles W. Lyon: They can stay attached to the answers to the interrogatories where they make an intelligible story and we can refer to them.

The Court: All right, by reference.

Mr. Charles W. Lyon: Of course I guess it would be proper to offer them in evidence at the same time but leave them in the interrogatories for safekeeping.

The Clerk: You don't have any other copies?

Mr. Charles W. Lyon: Yes, I have my copy here.

The Court: You want all these interrogatories in evidence, I suppose? You can decide that later on. Presently if you want we will take certain of the contracts out and give them exhibit numbers and let them remain in the answers to the interrogatories.

Mr. Charles W. Lyon: We will decide that later, your Honor.

The Court: All right. The first one, the agreement of July 16, 1945 between Talon-Kap-Tin and Silberman, do you want to give that an exhibit number now?

(Testimony of Ralph Meech.)

Mr. Charles W. Lyon: That is offered in evidence as Plaintiff's Exhibit No. 7. [301]

The Clerk: That begins at page 57.

The Court: Yes, page 57 of Plaintiff's answers filed May 8, 1952. It is received in evidence as Plaintiff's Exhibit 7.

(The document referred to, marked Plaintiff's Exhibit 7, was received in evidence.)

Q. (By Mr. Charles W. Lyon): Now, Mr. Meech, did you handle the negotiations for licenses under the Poux patent in suit, No. '017 to various competitors? A. Yes, I did.

Q. You have identified the agreement, Exhibit 7, between the Kap-Tin Development Company. Was there an agreement negotiated by you licensing the Ernst Slide Fastener Company under Poux '017? A. Yes, there was.

Q. Do you find that in the interrogatory answers?

The Court: Subject to my reading this Exhibit 7 in detail, tell me in one sentence what is the effect of this Exhibit 7? Is it a license to Kap-Tin?

Mr. Charles W. Lyon: License to Kap-Tin and I believe——

The Court: To use the Talon patents?

Mr. Charles W. Lyon: To use the Talon patents listed including Poux '017. And there was also a license back to Talon or an option back to Talon and Silberman.

The Court: An option to Talon from Silberman?

(Testimony of Ralph Meech.)

Mr. Charles W. Lyon: That is right.

The Court: Now, let us go ahead with your next question. You are looking now for a license agreement to Ernst.

Mr. Charles W. Lyon: Yes. It may not be in there.

The Witness: I was going to ask you are these supposed to be in order?

Q. (By Mr. Charles W. Lyon): No.

The Court: Well, go on with something else and look it up during the noon hour.

Q. (By Mr. Charles W. Lyon): All right. I will ask you also did you personally negotiate a license to the Herod Fastener Company under the Talon patents and specifically including Poux '017?

A. Yes, I did.

Q. Did you personally negotiate a similar license to Lamar Slide Fastener Company? A. Yes.

Q. Marvell Slide Fastener Company?

A. I did.

Q. Seltzer Fastener Company? A. I did.

Q. Strauss Fasteners, Inc.? A. I did.

Q. Servel Slide Fasteners, Inc.?

A. Yes. [303]

Q. Now, there were some other licenses which you did not negotiate but I will ask you with respect to four more companies whether, as chief resident patent counsel, you are familiar with the existence of and policed licenses under the Talon patents, specifically including Poux '017, to the American Fastener Company? A. Yes.

(Testimony of Ralph Meech.)

Q. Joy Manufacturing Company?

A. Joy at the time I came back with the company was not in business.

Q. But there was such a license?

A. There was such a license, yes.

Q. Prentice Manufacturing Company?

A. Yes.

Q. And United States Rubber Company?

A. That is right.

Q. Now, there was a later agreement between Talon, Inc. and Mr. Silberman. Did you have any part in the negotiations of the later agreement?

A. Yes, I did.

Q. That later agreement is in——

The Court: Is that the agreement of April 18, 1949?

The Witness: That is correct, your Honor.

Mr. Charles W. Lyon: That is correct. That agreement is in the answers to the interrogatories.

The Court: Page 43 of the answers?

The Witness: That is correct, according to my record.

Mr. Charles W. Lyon: Apparently my personal record doesn't agree with what the court has. I have an agreement of April 1944 between Kap-Tin. Can you identify what that is?

A. That is the first agreement between Kap-Tin and Talon.

Q. This is the Queen Manufacturing Company?

A. Oh, wait a minute. This is the agreement between Kap-Tin and Queen—not between Talon.

(Testimony of Ralph Meech.)

Q. I see that somebody put the wrong one in here. But you have located the agreement of April 1949 between Silberman and Talon. How does that differ from the original agreement of 1945?

A. Well, in the original agreement of 1945 we merely had a license under the Silberman patent application. Of course it was a cross-license which we gave Silberman back—a license under the '017 patent together with others.

The agreement of April 18, 1949 was an assignment of the Silberman patent to Talon together with a Silberman patent application and a Sontag application.

The Silberman application was, I believe at that time, a divisional case of the original patent which was then at issue—that is the '793 patent.

The Court: Are you going to put this agreement of April [305] 18, 1949 in evidence?

Mr. Charles W. Lyon: I offer it as Plaintiff's Exhibit 8, your Honor.

The Court: Exhibit 8 will be received in evidence. It appears at page 43 of the answers to the interrogatories.

(The document referred to, marked Plaintiff's Exhibit 8, was received in evidence.)

Q. (By Mr. Charles W. Lyon): Now, in the negotiations with Mr. Silberman for the purchase of his patent rights, it was necessary for you to inquire as to the foreign situation, was it not?

A. That is right.

Q. Did you find out what countries, if any, other

(Testimony of Ralph Meech.)

than in the United States, Mr. Silberman had patented his inventions corresponding to the invention of Silberman '793?

A. Yes, but these applications were filed after that. But we were, of course, advised of what applications were filed, but they were not filed previous to the time we were negotiating with Silberman.

Q. Of course the contract wasn't consummated until 1949. They were filed before that, weren't they?

A. They were filed before that in some countries, I believe.

Q. Would you care to read into the record what countries they were filed in, giving us the serial numbers and where? [306]

The Court: You are talking now about Silberman's patent?

The Witness: Yes, your Honor. This list I am reading from are corresponding applications filed in the respective foreign countries—what I mean by "corresponding," I mean corresponding to the patent application from which the '793 patent matured in this country.

Corresponding applications were filed in Argentina, No. 70130.

Q. (By Mr. Charles W. Lyon): Was that patent number or serial number?

A. Excuse me, that is the patent number.

The Court: You say they were filed. Are you going to tell us whether they matured into patents in those countries?

(Testimony of Ralph Meech.)

Mr. Charles W. Lyon: They did, yes.

The Witness: These patents were filed, patent applications were filed and issued into patents in the following countries:

Argentina. Patent No. 70130.

Belgium, No. 473,125.

Bolivia, No. 1204.

Canada, No. 467,126.

Chile. It is not indicated whether or not it was ever issued.

Colombia. No. 5121. [307]

England. No. 630,177.

France. 938,651.

Hungary. No. 139,065.

India. 38,175.

Italy. 433,890.

Paraguay. 600.

Spain. 175,676.

There was another patent in Spain, No. 178,853.

Switzerland. 256,221.

Uruguay. 4083.

Venezuela. 3965.

I think that completes the list.

Q. (By Mr. Charles W. Lyon): Now in negotiating with Silberman he also told you, did he not, that he could not grant you certain rights outside of the United States or the Western Hemisphere due to prior commitments, is that correct?

A. Well, I don't know whether he told us that he made prior commitments, but we didn't want

(Testimony of Ralph Meech.)

anything out of the Western Hemisphere. I will put it that way.

Q. He showed you, did he not, the copy of his agreement with Lightning Fasteners, Ltd., London, which is a subdivision of I. C. C.?

A. Yes, he did.

The Court: Before you go into that matter, let us get [308] this straight. I don't care what Silberman told you or didn't tell you. The question is tell me, which I will later confirm by reading these contracts, what did you buy from Silberman? His rights in the United States patent No. '793? [309]

The Witness: We bought from Silberman his rights in the '793 patent, plus these other applications that were pending at this time, for the western hemisphere—let me limit that to North America, Canada, Mexico, and the United States, subject to certain outstanding obligations that he had already made at that time.

The Court: All right. He sold the North American rights subject to certain limitations.

The Witness: Yes.

The Court: That brings me to another thing we have to clear up. When you offered in evidence Exhibit 8, we should identify how far it goes here. It starts at page 43, at page 57 appears signatures; 54 is a document called Exhibit B, Silberman's Outstanding Obligations—is that what you are talking about?

Mr. Charles Lyon: That is what we are coming to.

(Testimony of Ralph Meech.)

The Court: That is a part of Exhibit 8?

Mr. Charles Lyon: That's right.

The Court: Exhibit C are some other matters concerning Silberman caused the sale of the following machines.

Mr. Charles Lyon: That is what I was coming to, the fact that he could not give us exclusive because certain machines had been sold.

The Court: I want to find out what is part of Exhibit 8. The record doesn't show yet. [310]

The Witness: That is part of Exhibit 8.

The Court: As it appears in this document, you couldn't tell.

Then on page 56 appears an option and agreement. Was that part——

Mr. Charles Lyon: I intend it to be, yes, your Honor.

The Witness: That is right.

The Court: Part of Exhibit 8?

The Witness: Yes.

The Court: So Exhibit 8 runs from page 43 through page 56, is that right?

Mr. Charles Lyon: That is correct, your Honor.

The Court: Of the Answers. Okay.

Mr. Charles Lyon: We might just as well put the limits on Exhibit 7, which runs from page 57 through page 65.

Q. (By Mr. Charles Lyon): I have handed you a photostatic copy of an agreement between Mr. Silberman and Lightning Fasteners, Ltd.; was that agreement exhibited to you by Mr. Silberman?

(Testimony of Ralph Meech.)

A. That agreement was exhibited to me by Mr. Silberman, and I requested a photostatic copy of it.

Mr. Charles Lyon: I will offer the agreement just identified by the witness as Plaintiff's Exhibit 9.

The Court: Well, if there is no objection, I will receive it in evidence. I don't know what it is going to prove. [311]

Mr. Charles Lyon: For one thing, that I.C.I. was willing to pay 5,000 pounds a year for the rights under this Silberman patent in Great Britain.

The Court: Received in evidence as Exhibit 9.

(The document referred to was received in evidence and marked as Plaintiff's Exhibit No. 9.)

Q. (By Mr. Charles Lyon): I hand you a copy of an agreement in letter form on the letterhead of some translator's office. It seems to have been certified by the Consul in Brazil. It purports to be signed by David Silberman. I ask you if that is a copy of an agreement between Silberman covering the licensing of his patent in Brazil, and whether a copy of that agreement was also exhibited to you during your negotiations with Mr. Silberman.

A. This document was so represented to me, rather the original, as being the arrangement between David Silberman and Companhia Brasileira, whatever it is, in Brazil, that is his licensee in Brazil, as being the license under the corresponding

(Testimony of Ralph Meech.)

patent in that country, that is in Brazil, which corresponds to the '793 patent in suit here.

I also requested a copy of this agreement, which we were entitled to, and this is a copy of it.

Mr. Charles Lyon: The agreement just identified by the witness is offered as Plaintiff's Exhibit 10.

The Court: 10 received in evidence. [312]

(The document referred to was received in evidence and marked as Plaintiff's Exhibit No. 10.)

Q. (By Mr. Charles Lyon): Mr. Meech, did Talon, Inc., execute an agreement with Conmar concerning patent matters? A. Yes, they did.

Q. That original Conmar agreement was made prior to your connection with the Hookless Fastener Company, is that correct?

A. You mean the second time I came back?

Q. That's right.

A. Correct.

Q. And the original agreement was made during your absence, is that correct? A. Yes, sir.

Q. You became familiar with that agreement when you returned, though, did you not?

A. Definitely so.

Q. Can you find in the Answers to the Interrogatories the first Talon-Conmar agreement?

A. Yes.

Q. It is in front of you; will you find it, please? Look at Exhibit 11 to the interrogatories.

(Testimony of Ralph Meech.)

A. It is Exhibit 5 beginning on page 79, going through——

The Court: Wait a minute. I don't know what significance these exhibit numbers at the bottom have, so I think we will [313] just ignore them. I am referring now to exhibit numbers listed at the bottom of the pages of the answers to interrogatories. Let's refer to pages.

Mr. Charles Lyon: All right, sir.

Q. (By Mr. Charles Lyon): Beginning at page 79 of the answers to interrogatories? A. Yes.

Q. Through 90 or 89? A. 89.

Q. That is the original Conmar-Talon agreement which granted Conmar Corporation a license, among others, under Poux '017 in suit, is that correct? A. That is correct.

The Court: This is only a copy, but I suppose by your stipulation it is understood the copy may be used?

Mr. Mockabee: Yes, sir.

The Court: All right. It will be Exhibit 11. Do you offer it in evidence?

Mr. Charles Lyon: I offer it in evidence as Plaintiff's Exhibit 11.

The Court: Received.

(The document referred to was received in evidence and marked as Plaintiff's Exhibit No. 11.)

Q. (By Mr. Charles Lyon): Going to the next page, I [314] think you will find another agreement beginning on page 90, dated in 1951; is that an

(Testimony of Ralph Meech.)

agreement negotiated by you between Conmar and Talon? A. Yes, it is.

Q. Does it supersede the agreement which has become in evidence as Plaintiff's Exhibit 11?

A. What is that?

Q. I asked you did that agreement between Conmar and Talon supersede the previous one.

A. Yes, it did.

Mr. Charles Lyon: The agreement just identified by the witness, beginning on page 90 of the answers to interrogatories, and running to page—

The Court: 94.

Mr. Charles Lyon: —94, is offered as Plaintiff's Exhibit 12.

The Court: Exhibit 12 is also a copy, and it is agreeable, is it, that it may go in evidence, though it is not the original?

Did you cover that in your pretrial stipulation?

Mr. Charles Lyon: Yes, we did, sir.

Mr. Mockabee: Yes, we did.

The Court: All right. Exhibit 12 in evidence.

(The document referred to was received in evidence and marked as Plaintiff's Exhibit No. 12.) [315]

The Court: What was the effect of these agreements? Just tell me in a sentence. I will have to read them. Cross-licensing?

The Witness: They were cross-licensing arrangements, all these agreements we have mentioned so far.

Mr. Charles Lyon: The main effect as far as this

(Testimony of Ralph Meech.)

case is concerned, there may be some argument later concerning the plaintiff imposing upon its licensees quota restrictions.

What did the agreement of 1951, Exhibit 12—what provision in that agreement affected any quota restrictions in Exhibit 11?

The Witness: You refer now to the last agreement?

Q. (By Mr. Charles Lyon): Yes.

A. The current agreement between Conmar and Talon?

Q. That's right.

A. There are no restrictions, there is no quota arrangement of any kind. It is strictly a cross-license arrangement where the parties got together and there were certain patents that we would like to have a license under, and there were certain patents that they wanted of ours, which they needed a license, so we entered into a cross-license arrangement.

I might say at this point, as long as you brought up the quota arrangement, that in those quota arrangements, the reason the quota was set forth was that we thought that we were giving more than we were getting back in these arrangements, [316] so that is why we gave them a quota to a certain amount. In other words, we were giving more than we were getting, so that is the way we offset and evaluated the license between the parties.

Q. Who or what is Cierra Rellampago?

The Court: Spell it, please.

(Testimony of Ralph Meech.)

Mr. Charles Lyon: C-i-e-r-r-e R-e-l-l-a-m-p-a-g-o.

The Witness: "Cierra" means fastener, and "Rellampago" means lightning in English. That is our subsidiary in Mexico City.

Q. (By Mr. Charles Lyon): "Our" meaning Talon, Inc? A. Yes.

Q. You have been down there?

A. Yes, I have.

Q. Have you seen the machines they are using down there?

A. No, I have not. I saw the machines when they were in Cleveland.

The Court: Before they were sent to Mexico?

The Witness: Before they were sent to Mexico.

Q. (By Mr. Charles Lyon): What kind of machines were those?

A. They were of the type that I had seen previously, when I first came back with Talon, on David Silberman's premises at Cooper Square.

Q. They are similar to the ones you saw at Cooper [317] Square in the spring of 1944, is that right?

A. That is right. They are the original Silberman type machine with a single head.

Q. Where did you get them?

A. We bought those from one of Silberman's licensees in Canada.

Q. And eventually you shipped them to your Mexican subsidiary, is that correct?

A. That is correct.

Q. And they are being used to manufacture zip-

(Testimony of Ralph Meech.)

pers in Mexico City at the present time, is that correct? A. That is right.

Q. Why did you buy the Silberman patent in suit, No. '793?

A. Well, it is a rather lengthy story, but I will try to make it brief.

Through the years, of course, we have spent thousands and thousands of dollars for research in our own research department. We have never come up with a machine, that is, our research department, which was a practical machine for using the method shown in the '017 patent, which we always thought was the practical method of making slide fasteners or zippers as they are more commonly called. There was nothing done, I mean we got no place in that respect. We always knew that one day we would have to have a machine that would produce a [318] fastener cheaper than our present machines at that time, and one that was much faster.

The machines we were using at that time were sluggish, although they made a quality product. And those machines operated around 600 r.p.m., and eventually we did increase the speed of those machines to possibly 800. But we still thought that it was not a very efficient machine, and it certainly wasn't when you compare it today with the Silberman machine shown in the '793 patent, which we run and operate at around 2500.

Through the years we hadn't found a machine. Then along came the war and we were, of course, restricted in our research activities. Shortly after

(Testimony of Ralph Meech.)

the war, rather, during the latter part of the war, Silberman had developed this machine, and of course asked us to see it after we had notified him of infringement. [319]

The first machine did not go as fast as the present machine. I believe that machine was around 1500 RPM's. We weren't too much interested at that time.

Then a few years later he came up with the double head and wanted us to look at that.

"What speed will that go?" And he said, "I have a machine now that will operate at 3600 RPM's."

Well, that was a theoretical speed. The machine actually operated between 2500 and 3000 but it was still a very decided advance as far as we were concerned, in the zipper field, as we had never seen a machine that would operate that fast. We never expected to see one, frankly.

That was when we finally negotiated and bought—purchased his patents for our own commercial production.

Q. (By Mr. Charles W. Lyon): What was the consideration paid to Mr. Silberman for his patent '793 and the other two applications which accompanied it?

A. \$75,000 if I recall exactly.

Q. Prior to that time you had given him certain sums of money for an option, is that right?

A. That is correct.

Q. How much was that?

(Testimony of Ralph Meech.)

A. I think that was in the neighborhood of \$10,000.

Q. Now, in this art you are familiar with the method of producing zippers shown in the Sundback patent '884, [320] is that correct?

A. I am familiar——

The Court: You are going into a new matter?

Mr. Charles W. Lyon: Yes.

The Court: It is 12:00 o'clock.

Mr. Charles W. Lyon: I can finish this in about two minutes.

The Court: All right.

The Witness: I am familiar with them in that I have seen the product.

Q. (By Mr. Charles W. Lyon): Now, isn't it a fact that in Sundback it first rolls the strip, is that right?

A. I beg your pardon. I thought you meant the first—what patent are you referring to?

Q. Well, I had better go to another subject.

The Court: Are you still going to finish in five or 10 minutes?

Mr. Charles W. Lyon: Yes.

Q. (By Mr. Charles W. Lyon): In this industry what is a rod and what is a wire?

A. Well, it so happens that I am connected with the steel industry. In the steel industry I was confused when I first went down to them and I would speak of a certain thing as a wire and they would say: "That is a rod, not a wire." "How do you dis-

(Testimony of Ralph Meech.)

tinguish the difference?" "It is [321] just a matter of degree."

When they get above a certain dimension they call it a rod and below that it is a wire.

Q. Would you care to comment, and I understand that the company doesn't want you to use a figure, but give us an approximate figure on what if any savings there is in the production of zippers in using the Silberman machine as compared to its predecessors?

A. Well, I am not prepared to quote a figure, but it is a decided saving.

Do you want a comparison with our present method or prior method? Is that the comparison you want?

Q. With any method you know of.

A. Well, what we call the strip process method where there is no pre-forming there is a decided savings because there is no pre-forming of the wire. Those operations are eliminated and of course all the handling is eliminated and usually after pre-forming a wire strip it has to be annealed. Of course that is an expense.

In the Silberman method or the strip method as shown by Poux, there is no pre-forming of the strip. The strip is fed directly into the machine and between the dies fabricated and attached—the element is attached to the tape.

The tool maintenance is cheaper.

Furthermore you get a fastener which is much

(Testimony of Ralph Meech.)

more [322] efficient in its operation in some respects than other types.

Mr. Charles W. Lyon: Your Honor, I find that I failed to go into the question of the commercial production figures and I don't believe the witness has them with him. So, if we may now take the noon recess we will be prepared to take that up after the adjournment.

The Court: Tell me what you mean by "fasteners more efficient in some respects"? What respects?

The Witness: Well, as I say they are more efficiently attached or effectively attached to the stringer tape. I meant the operation is more efficient when I said that.

The Court: All right, take a recess until 1:30.

(Whereupon, at 12:00 o'clock noon a recess was had until 1:30 o'clock p.m. of the same day.) [323]

Thursday, March 3, 1955; 1:30 p.m.

The Court: Call the case.

The Clerk: Talon, Inc., vs. Union Slide Fastener, Inc., No. 10450 Civil, for further trial.

The Court: Proceed.

RALPH E. MEECH

a witness called by the plaintiff, having been previously sworn, resumed the stand and testified further as follows:

(Testimony of Ralph Meech.)

Direct Examination—(Continued)

Q. (By Mr. Charles W. Lyon): Mr. Meech, who is Roland Kelley?

A. Roland Kelley was house counsel for Talon for a number of years.

He was my predecessor and still stayed on a retainer when I first came back to town in 1944.

Q. When did Mr. Kelley sever his connection—did Mr. Kelley sever his connection with Talon?

A. It was sometime, I think, in the middle of—during the summer, either the 1st of June or the 1st of July of 1944. During the first part of the year he was on a retainer and he would be at the office, come in to the office possibly one day a month or two.

Q. Well, is it your testimony that he had severed his connection with Talon by the 1st of June 1944?

A. By that time I would say yes.

Q. Now, this meeting which you had with Mr. Silberman in the spring of 1944, did anyone accompany you to Mr Silberman's place of business?

A. Yes; Roland Kelley.

Q. And that would mean that this meeting was prior to the 1st of June 1944, would it not?

A. That is right.

Q. After Talon, Inc. secured its license from Silberman, which license is in evidence here as Plaintiff's Exhibit 7, what steps, if any, were taken toward commercial use of the Silberman invention by Talon, Inc?

A. Shortly thereafter we acquired one of his

(Testimony of Ralph Meech.)

new machines—that is the double head as we call it, and it was set up for experimental purposes. Tests were run in New York in July of 1947 and then it was taken to our Hamden plant at Hamden, Connecticut.

The Court: July of 1945?

The Witness: July of 1947.

The Court: Two years later?

The Witness: That is right.

The Court: I didn't get the date. Was that when it was set up?

The Witness: That is when the first experimental machine was set up. [325]

The Court: In your New York plant?

The Witness: In our New York plant, yes.

The Court: When did you take it to Connecticut?

The Witness: We took it up there, oh, about less than a month later.

The Court: Go ahead.

The Witness: And it was brought back to New York again in August. Then it was returned to Hamden again in September and there a series of tests were made on the machine and finally it was shipped to Cleveland, Ohio, to our plant there, in July of 1948.

From then on it was used and similar machines were purchased and built and used in commercial production at our Cleveland, Ohio plant for a couple of years. [326]

(Testimony of Ralph Meech.)

Mr. Mockabee: Pardon me. Could the witness speak a little louder, please?

The Witness: Okay.

Q. (By Mr. Charles Lyon): If I understand you correctly, then you went into commercial production at the Cleveland plant with that machine in 1948?

A. It would have been about September 1948.

Q. Do you know when you acquired the next machine embodying the invention of the Silberman patent?

A. At that time there were other machines being built after the grooming of the machine was completed at Hamden and the tests made. I believe at that time we built eight additional machines, until we got a battery of 16 machines, which took, of course, oh, it was over a course of a couple of years.

Q. Do you presently have machines similar to Plaintiff's Exhibit 5 in production at the Wilzip division of Talon, Inc.?

A. We do not. We closed the Wilzip division in 1954, and those machines were moved to Cleveland, Georgia, where we are currently using those machines in a plant especially built for that operation.

Q. How many machines are being used at Cleveland, Georgia, of the Silberman type?

A. There are 16 to 20. I would not know the exact number, [327] but it is around that.

The Court: Now I am lost again here. You threw in the name of your Wilzip plant. Was that the name of your Cleveland plant?

(Testimony of Ralph Meech.)

The Witness: The name of our Cleveland plant was Wilson Division of Talon, Inc., but we used the trademark Wilzip on that product that we made at the Wilson Division.

The Court: When you talked about shipping the machine to Cleveland in July of '48, starting in commercial production in September of '48, you are talking about the same plant that you referred to as the Wilzip plant?

The Witness: That is correct.

The Court: Now, you say in '54 you closed that plant in Cleveland?

The Witness: That is right.

The Court: And you moved the machines to Georgia?

The Witness: Cleveland, Georgia.

The Court: Cleveland, Georgia?

The Witness: Yes.

The Court: At Cleveland, Georgia, there is now a battery of 16?

The Witness: That is right.

Mr. Charles Lyon: 16 to 20, I believe he said.

Q. (By Mr. Charles Lyon): Is the machine which is in the other court room, Plaintiff's Exhibit 5, a machine from [328] Cleveland, Georgia?

A. Yes, sir, that is a machine from Cleveland, Georgia, and one of the machines that was at Cleveland, Ohio.

Q. And was Exhibit 5 on the production line and in use producing zippers at Cleveland, Georgia,

(Testimony of Ralph E. Meech.)

prior to being shipped out here for the purpose of this trial? A. Yes, it was.

Q. Do you have production figures showing the total amount of zippers manufactured by the plaintiff using the machines embodying the Silberman invention year by year? And I mean by that these machines similar to Exhibit 5. A. Yes, I do.

Q. Would you mind reading those figures into the record?

The Court: Is this overall production or just from one place?

The Witness: I will give it as we have named it or termed it the Wilzip Division. It would be by year.

The Court: Is the place in Cleveland, Georgia, called the Wilzip?

The Witness: It is not. It is called just our Cleveland plant.

The Court: Now you are going to give figures from the Wilzip plant? [329]

The Witness: That is correct.

In the year 1948, that was of course about three or four months which we operated those machines, there was only 56,000 units, 56,994.

Q. (By Mr. Charles Lyon): When you say units, what do you mean?

A. Completed fasteners.

The Court: Unit means the two fasteners with a divider?

The Witness: That is correct.

The Court: All right.

(Testimony of Ralph E. Meech.)

The Witness: I have chain production here, but I think possibly the fastener production will suffice.

Q. (By Mr. Charles Lyon): Just confine yourself to complete fasteners, two chains connected by a slider. A. That is right.

Mr. Mockabee: How many did the witness say?

The Court: 56,994.

The Witness: In 1949 we were starting to get rolling and we made and produced and sold that year 8,157,411.

Mr. Charles Lyon: I think your voice would be a little more intelligible, Mr. Meech, if you take your hand away from your face.

The Witness: In the year 1950 the production was 14,130,665; 1951, 13,207,540; in the year 1952, 12,338,466.

I said we moved the plant to Cleveland, Georgia, in '54, [330] but we closed our production line in Wilzip and we only operated there for the first quarter of 1953, and we made 2,303,330, that is at Cleveland, Ohio. That was the last of our production at Cleveland, Ohio. The last three quarters we operated the machines in Cleveland, Georgia. I think I said before that we moved in '54. I should have said '53. In that three quarter period of '53 we made 8,578,450 units. In the year 1954 our production was increased materially and we made 42,614,072 units.

Q. (By Mr. Charles Lyon): I think the record is clear, but state again for the record what type

(Testimony of Ralph E. Meech.)

of machine was producing the unit whose figures you have just read into the record?

A. It is the same type of machine that is shown, I think it is Plaintiff's Exhibit 5 in Judge Hall's court room.

Q. When you say "unit," is there a standard unit in the industry?

A. Yes, sir, the fastener unit is usually taken as 10 inches.

Q. 10 inches or 12 inches, possibly?

A. 10 or 12.

Q. And each unit to be complete must be composed of two stringers closed by top stops and sliders, is that right?

A. That is correct, plus a bottom stop. [331]

Q. And these figures you have read into the record or units, include units so composed, is that correct?

A. That is correct, although sometimes we don't put bottom stops on or top stops, but that is right.

Mr. Charles W. Lyon: That is all.

The Court: Now, while you are at it, how did this production that you listed made from the Silberman type machine compare with the production from the other type machines that you operated?

Maybe I should ask first what other types of machines did you operate during this same period of time?

The Witness: That is difficult to answer, your Honor. We do have presently—we use three types of machines.

(Testimony of Ralph E. Meech.)

Before we acquired the rights to the Silberman machine we had about five or six hundred machines which, of course, we couldn't exactly, so to speak, throw out the window. In other words we had to use those machines because we had a capital investment there.

We have gradually increased our production facilities on the Silberman type machine, as shown by Plaintiff's Exhibit 5. Now, that machine, of course—I say 18 or 20, whatever it is, and that is the double head machine and that means you have 40 machines because you are making two stringers at one time and that machine operates at about three or four times the speed of the machines—the major portion of the [332] machines that we are using which we call the Sundback type machine.

The Court: Well, let us be specific. Before you acquired the Silberman rights how many types of machines were you using?

The Witness: We were using one type of machine.

The Court: Sundback?

The Witness: That is correct.

The Court: Is that a machine embodying the principles and disclosures in '884 of the Sundback patent?

The Witness: No.

The Court: Well, we will not go into it now but you call it the Sundback machine, is that right?

The Witness: That is right.

The Court: Now, you say "presently."

(Testimony of Ralph E. Meech.)

Mr. Leonard S. Lyon: There is another Sundback patent that we could identify here.

The Court: Do you know which one that is?

The Witness: If I could see the patent I could tell you, yes.

(Document handed to the witness.)

The Witness: It is a machine of the type that is shown in patent No. 1,467,015.

Mr. Leonard S. Lyon: That is the "Y"-shaped wire machine?

The Witness: That is correct. [333]

Mr. Charles W. Lyon: Inasmuch as that patent has been referred to I will offer it at this time, a soft copy of the Sundback patent No. 1,467,015 as Plaintiff's Exhibit 13.

The Court: Plaintiff's Exhibit 13 is received in evidence.

(The document referred to, marked Plaintiff's Exhibit 13, was received in evidence.)

Mr. Charles W. Lyon: I have to take it out of this book, Mr. Figg, and hand it to you later.

The Court: Now, you say presently you are using three types of machines?

The Witness: That is correct.

The Court: What are these types you are using?

The Witness: The other machine is an improvement on the Sundback type of machine where we still use a pre-formed wire—"Y"-shaped cross-section.

The Court: So presently you are using the Sil-

(Testimony of Ralph E. Meech.)

Silberman machine, the original Sundback and the improved Sundback machine?

The Witness: That is correct.

The Court: Now, I am not concerned with the exact figures but what percentage of your production in the period of time that you have been listing from 1948 on to 1954 has come from your Silberman machines, taking the operation of your company and its subsidiaries into consideration. Can you give me a percentage figure year by year?

The Witness: That would be difficult to do.

The Court: What kind of figures can you give me, if any?

The Witness: Offhand I couldn't give you any figure that would be very accurate.

In using this particular fastener made on the Silberman machine, we serve a different market than we do with our over-all business and it would be difficult to break it down and I don't think it would be fair to compare those two markets.

The Court: I take it from what you are saying then that the smaller part of your production is on the Silberman machine.

The Witness: It is not as great as the other production, that is correct.

The Court: What is the difference in the market that is served by the products of the Silberman machine and the market that is served by the Sundback machine and the improved Sundback machine?

The Witness: Well, your mass market and your

(Testimony of Ralph E. Meech.)

big outlet is in the dress field—placket field that is, and trouser fasteners.

We have used the Silberman machine more because we can make the fastener cheaper to serve those markets than we can on the Sundback type machine. [335]

The Court: Well, do I understand then that the Silberman machine is used primarily for the dress and trouser market?

The Witness: Wherever we have to make a fastener at a competitive price.

Mr. Leonard S. Lyon: Does that include the dress and trouser field?

The Witness: Does what include that? I don't get your question.

Mr. Leonard S. Lyon: The court asked you whether your production for dress and trousers was made on the Silberman machine and you didn't quite answer that question.

The Witness: Oh, not entirely, no.

The Court: In other words you can make the fastener cheaper on the Silberman machine but it is not as good a fastener?

The Witness: I wouldn't say it is not as good but it serves a market, yes. We can make it cheaper and it is good enough and is a good fastener for that type of application.

We cannot make larger sizes on the Silberman machine as we can on the Sundback machine and we think the Sundback fastener is a little smoother

(Testimony of Ralph E. Meech.)

—a little smoother fastener and is better for other applications.

The Court: You mean better than the Silberman machine?

The Witness: Yes, sir. [336]

The Court: Well, if the Silberman machine fastener is as good as the Sundback fastener, which on one occasion you said and on another occasion you subtracted from, why haven't you gone exclusively to Silberman or why haven't you devoted the larger amount of your production to Silberman rather than Sundback?

The Witness: Why, I think I said, your Honor, that we have a capital investment in machinery and equipment that we can't change—make a change really overnight.

When you have a battery of machines like we have it is quite a change. The big thing is your labor situation.

I didn't want to get into this but you have quite a time with your labor unions in changing machines.

If you get another machine up there and that machine can be operated with fewer men than other equipment you have to fight your labor unions before you get into production.

The Court: Is that why you went to Georgia, Cleveland, Georgia to set up the Silberman machine?

The Witness: Yes.

(Testimony of Ralph E. Meech.)

The Court: You might as well answer it because I thought that was the situation.

The Witness: That is right.

The Court: Cheap and willing labor.

The Witness: That is right.

The Court: All right. You may cross examine.

Mr. Mockabee: If the court please, I only recently got into this case and there are many things that I wish I had had an opportunity to go into considerably more deeply.

Mr. William J. Graham of New York City, is coming in tomorrow morning by plane and would like the opportunity of cross examining Mr. Meech.

If his cross examination can be held until tomorrow we will appreciate it.

The Court: Do you have any further witnesses, Mr. Lyon?

Mr. Leonard S. Lyon: No, your Honor, we are ready to close the plaintiff's prima facie case but if the defendant would be deprived of any opportunity of cross examining this witness I am willing that the case should be closed subject to his cross examination and go on with the defendant's case.

The Court: Are you prepared to go ahead with your case at this time?

Mr. Mockabee: I have some prior art here I can discuss, quite a bit of it, which would be the opening more or less, of our case.

Mr. Leonard S. Lyon: I would just like to ask the question as to whether the defendant expects

to proceed in the trial with its counterclaim under the antitrust laws?

Mr. Mockabee: Yes, I do, and that is another thing where Mr. Graham is much better acquainted than I. He has been working with this case for some time. [338]

Mr. Leonard S. Lyon: I am willing to adjourn until tomorrow morning if the court thinks that that would be more fair to the defendant.

Mr. Mockabee: It would greatly assist defendant's counsel.

Mr. Leonard S. Lyon: I think you have done pretty well, Mr. Mockabee, but if Mr. Graham is better prepared than you are I don't want to take any advantage of the situation.

The Court: Well, are we going to finish this case sometime next week? How long do you estimate it will run? How long do you estimate it will take you to put on your case?

Mr. Mockabee: I look at it from the patent side more than the counterclaim side personally because of the fact that Mr. Graham is much better prepared on the counterclaim.

As far as the patent side is concerned I would hope that we could finish up in two or two days and a half. [339]

The Court: Well, then, that leaves open the question of length of time on counterclaim, and there is rebuttal here on the other side.

Mr. Mockabee: Yes, sir.

The Court: The case ought not take two weeks to try.

Mr. Mockabee: Well, it appears to have a few ramifications. There is a considerable amount of prior art. I don't believe it is going to be too lengthy a discussion explaining that art and presenting it, because the court is now well acquainted with the machine and the patents in suit, we have, I believe, just one witness to call.

The Court: Is he available?

Mr. Mockabee: Yes. He is beside me.

The Court: Is he going to explain the prior art?

Mr. Mockabee: I am going to have to do that myself, your Honor. Defendant is not in a financial position to hire a patent expert. He has spent some \$12,000 on this case so far, and he is not a large corporation.

The Court: Well, then, let's close the plaintiff's case subject to their right to reopen it for the purpose of this cross examination tomorrow, and let's proceed a while this afternoon on this prior art and get as much as we can done, and if we adjourn a little early, all right.

Mr. Mockabee: Yes.

The Court: Plaintiff then rests subject to the taking of [340] this cross examination at a later date?

Mr. Leonard Lyon: That is correct.

The Court: By the way, you offered in evidence the Lipson deposition. I have looked it over partially. Most of it is a matter of identification of drawings and so forth. Is there anything else in there that you are relying upon except that?

Mr. Leonard Lyon: He was asked some ques-

tions about the elements of the claims of the patent, and I think that will be pertinent, your Honor.

The Court: Supposing you segregate out of there what you want me to read.

Mr. Leonard Lyon: All right.

The Court: Because a lot of that has no value at all; it is merely foundation for the documents which later on were used by your expert.

Mr. Leonard Lyon: We will hand you a memorandum in the morning of what pages we think are worth reading.

The Court: All right.

Mr. Mockabee: Defendant takes the position that the Poux patent in suit, whose claims are directed to a method of making slide fastener elements and attaching them to a tape, is for a method which from the teaching in the patent is not sufficiently practical, nor sufficiently disclosed and explained to constitute (1) a valid disclosure of a method, and [341] (2) an operable method.

Defendant's position is, further, that the method of the patent to Poux is one which was derived from patents in the prior art. That distinctions, if any, between Poux' method and the prior art are merely those of which a person skilled in the art is capable.

We propose further to show that the alleged invention claimed in Poux' '017 is from a standpoint of patentability and scope the same as the invention claimed in Poux' '016.

Regarding the workability or operability of the method disclosed by Poux and its teaching, the only

teaching is with regard to the use of a round or a square rod, as distinguished from the use of stock in the form of a thin, relatively wide metal strip, the latter being the type of stock of which all zippers are made.

There has been some discussion on the part of plaintiff's expert with regard to the fact that Poux would operate with soft metal rods. It is defendant's position that soft metal in a zipper element is totally impractical.

Furthermore, the use of a rod, as distinguished from a thin relatively wide strip, requires that the element made from the rod be of the same height, that is in a line length-wise of a tape to which the elements are secured, as the width of the element.

Slide fasteners which are made today and have been made [342] for many years are of such proportions that the width is considerably greater than the height, or the height is kept at a minimum to make the fastener elements neater, and the assembly as a zipper more compact.

The use of rods, such as in Poux, would result in a zipper which would be cumbersome, and in the estimation of plaintiff, and I think the whole trade, impractical and unacceptable to the purchasing trade.

The Court: You said, "in the estimation of plaintiff"; do you mean the defendant?

Mr. Mockabee: Pardon me. I think the plaintiff would agree.

The Court: You mean the defendant, though?

Mr. Mockabee: Yes.

The Court: Read it, Mr. Reporter.

(The record was read by the reporter.)

Mr. Mockabee: Yes, I meant defendant.

The prior art shows various types of machines for manufacturing slide fastener elements and securing them to a tape.

In the prior art, which includes punch press mechanism, for forming metal fastener elements from continuous metal strips, we can show that it was not new to form the fastener element from a strip and sever the formed element from the end of the strip and simultaneously secure it to a supporting structure, not necessarily a zipper. [343]

The zipper industry, the zipper art, is probably interesting, but it is not anything which has any peculiar characteristics which make it in a field necessarily by itself with regard to prior art. It is defendant's position that prior art developments relating to pieces which are punched from a continuous strip, whether they are zippers or other fasteners, or other metallic elements, still are of a related art, and it would be well within the natural imagination or ingenuity of a person skilled in the zipper field to look to any punch press art for improvements in his machine.

The Court: At that point let me interrupt.

Did the codification of the patent law have some effect upon that point? In other words, I understood the case law, prior to the modification of the patent statute, provided that if through mechanical skill a skilled mechanic would go to some other art to get his information or could be expected to do

that, that you could look to another field, maybe an unrelated field, and it would seem to me that that was a section which in a way almost codified that.

Mr. Mockabee: I don't have a copy of that with me, your Honor.

The Court: Isn't there a section on it?

Mr. Mockabee: Offhand I don't recall it, your Honor.

Mr. Leonard Lyon: The subject is discussed in the patent text under the difference between analogous and non-analogous arts. [344] That is where you find the discussion. If the art is enough analogous so that it would be presumed that an inventor or a mechanic would borrow from the other art, then it is known as an analogous art. If it is so remote that you wouldn't presume or 'wouldn't assume that a man working in the first art would naturally go to the second art, then it is known as a non-analogous art. And the cases make a distinction between what is shown in an analogous art and what is shown in a non-analogous art, and the latitude between those two depends somewhat on just how much of a difference there is between what you are looking for. I mean if it is wide step, the art must be very close; if it is a slight step that you are looking for, the art can be further away. It is a very complicated subject. And I don't believe that the Patent Art of 1952 attempted to alter the law on that subject.

The Court: I don't think it altered the case law, but I think they put that in a new section, didn't they?

Mr. Leonard Lyon: Yes.

The Court: Did you cite me that section, Mr. Lyon, in the aircraft case?

Mr. Charles Lyon: If you are referring, your Honor, to the section about mere mechanical skill, I can find that immediately.

Mr. Leonard Lyon: I have got it here.

The Court: That is the section I think that has a bearing on it. [345]

Mr. Leonard Lyon: There is a Section 103 of the 1952 Patent Art which says:

“A patent may not be obtained though the invention is not identically disclosed or described as set forth in Section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.”

Section 102 prescribes in Section (a):

“The invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or

“(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, or

“(c) He has abandoned the invention.” [346]

There is nothing about analogous and non-analogous arts. I will look through this section.

The Court: I am thinking about 103. It seems to me the language there is almost broad enough to cover that situation. Isn't 103 a new section?

Mr. Leonard Lyon: It is a new section——

The Court: (Continuing) ——that attempted to codify case law?

Mr. Leonard Lyon: It is a new section in the patent statute. There never was a section on mere mechanical skill not constituting invention in the patent statute before this statute was written, but the Supreme Court over 100 years ago adopted that test for patentability, and has consistently adhered to it.

The Court: Yes. That is the section I am thinking about.

Isn't that section broad enough in its implication to almost cover this other situation?

Mr. Leonard Lyon: It says the art to which the invention pertained.

The Court: If the difference between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. [347]

Now, they have been very careful to tell what kind of skill the person should have who should know about this. He must be skilled in the art to

which the subject matter pertains. But the rest of the section is very broad. [348]

Mr. Leonard S. Lyon: It has always been the law, for example, to take an extreme case that you wouldn't charge a man working on an oil derrick, who is inventing some improvement in a tool that was used in the oil derrick, with knowledge of what was used in the shoe machinery business in Boston.

But there are many and various degrees and permutations of that and I think if the question becomes material here we will have to present the authorities and apply them to the particular situation here.

One of the greatest cases on the subject in the Supreme Court was Potts vs. Kreiger (phonetic) where there was a patent for freezing food products and the question was whether the process of preserving a corpse was an analogous art.

The Court: All right. You answered my inquiry. Go ahead.

Mr. Mockabee: Your Honor, doesn't that section refer to mechanical skill with regard to prior art in that same field?

What I was speaking of was—I think that this is in—this prior art on punch press operations and apparatus generally are in analogous fields to this specific zipper industry. We are not, as the plaintiff has maintained, branching out too far from that field in some of the art upon which we are depending.

Mr. Leonard S. Lyon: I haven't maintained it because I don't know what it is yet. [349]

The Court: Go ahead.

Mr. Mockabee: I think some place here in the record I ran across that, but I haven't it at my fingertips.

In other words, if a punch press using progressive dies is used to make zipper elements or any one of a dozen or more other different types of things and it has the same general assembly of its functional parts, but slightly different specific punches or tools in that assembly, and the same or nearly exactly the same punches and tools are found in the prior art in zipper machinery, then it amounts to no intention to arrive at the method set forth in the Poux patent in addition to the fact that we do not believe that is a practical, sufficiently practical and sufficiently disclosed method to furnish one with the information to practice it.

Mr. Leonard S. Lyon: The court might be interested in the revisor's notes to Section 103. They read:

"There is no provision corresponding to the first sentence explicitly stated in the present patent statute, but the refusal of patents by the Patent Office and the holding of patents invalid by the courts on the ground of lack of invention or lack of patentability—patentable novelty has been followed since at least as early as 1850." [350]

This paragraph is added:

"With the view that an explicit statement in the statute may have some stabilizing effect and also to

serve as a basis for the addition and at a later time of some criteria which may be worked out."

The Court: They don't mention the matter we are discussing.

Mr. Leonard S. Lyon: No, they don't mention the word.

The Court: They say what they are trying to do but whether they did something more than they tried to do is still a question. Go ahead, Mr. Mockabee.

Mr. Leonard S. Lyon: There could be a patent system where if you invented anything new you would get a patent on it and if it didn't amount to much the theory would be you weren't getting ownership of very much.

There could be a system of that kind but that isn't the kind of system we have in this country.

In this country we assume there will be normal progress due to the skill of the routine workmen in the art and the patent system is reserved for some accomplishment that involves some inventive effort over and above the kind of effort that an everyday workman puts into his job.

The Court: Go ahead, Mr. Mockabee.

Mr. Mockabee: The Silberman patent in suit, '793—

The Court: You are now stating your position?

Mr. Mockabee: I am just outlining my position.

The Court: All right.

Mr. Mockabee: Silberman patent '793 is attacked—pardon me. One more remark about Poux.

We maintain that Poux is invalid. We also main-

tain that claims 1 through 4 of Poux are not infringed, valid or not, because of the specific and emphatic inclusion in those claims of a rod.

The only rod referred to in the claims is that shown in the drawing and discussed in the text and can only be construed as a rod whose height and width are equal.

Regarding Silberman '793 the defendant has several defenses. One is that Silberman is not the inventor of that patent in suit; that he secured it—that he secured the information from which the application was filed from John Havekost, and purported to have purchased from Havekost or secured from Havekost a waiver which amounted to nothing more than an assignment from Havekost to Silberman of patent rights which Havekost may have had, which is different from his actual inventorship of the apparatus in the patent.

A person can own rights in a patent without being an inventor at all. And on the other hand we think that Havekost was the inventor and that this purported waiver or disclaimer of any invention was not sufficient but merely a transfer of any claim to rights in the patent and income therefrom. [352]

The Silberman patent as stated by plaintiff's witness, was the result of 13 years of attempts to produce a machine which would carry out the Poux process or method.

The Silberman machine does not operate upon a rod. It operates upon a flat strip. It in generally has the functional organization that the apparatus

disclosed but not claimed in Poux, which was so disclosed to illustrate the manner in which the Poux method was to be carried out.

Silberman includes in his patent and in his claims some elements which are not shown in Poux but which are common to the prior art, prior not only to Silberman but to Poux.

These include the general arrangement of the base and the ram, the shaft, the eccentrics, of small eccentrics, the connecting rods. Some show single connecting rods and there is one showing at least a double connecting rod to a single ram upon a punch press mechanism.

Silberman contains a machine for operating similarly to the manner shown in Poux but the entire assembly is clearly shown in prior art patents.

The Silberman patent was not a development of the plaintiff. It was a purchase by plaintiff and whether or not plaintiff expended any length of time or any amount of money on attempting to develop a machine to carry out the Poux method, the Silberman patent does not represent any such effort. [353]

The Silberman patent was purchased a comparatively short time prior to the time suit was filed against defendant here. And it is defendant's position that one of the objects in gaining control of the Silberman patent was not merely to assist in trying to bring defendant into line in the industry but to have a similar effect on others and that the machine of the patent or machine is similar to the Silberman patent are not the machines used for

producing plaintiff's principal and first line brand of zippers; that the machine and the patent were acquired by the plaintiff to enable it to produce a high speed zipper which is cheaper, not only in price but in manufacture and operation than Talon's—the plaintiff's first line of product.

That products of this machine, allegedly made under the Silberman patent, are deliberately put out cheaper in order to drive out small competition.

The Court: Is there anything wrong with that legally?

Mr. Mockabee: Well, this relates more to the counterclaim.

The Court: Assuming the statement you made is true, is it anything that you can talk about except in Sunday School?

Mr. Mockabee: To put out a cheap, impractical product that is not a good consumer product merely for the purpose of driving out competition and to cheapen the entire industry. [354]

The Court: As I understand our competitive system makes that permissible. If you have to meet competition you put out a cheaper product.

Mr. Mockabee: As I said, your Honor, it is not that bare statement alone, but that coupled with an attempt by the plaintiff before it seriously entered this trade area with the Wil-Zip zipper or with the Falcon zipper or another cheap zipper produced by plaintiff, to get the then three local manufacturers, small independents of which defendant was one, to maintain a price in this area and being unsuccessful—well, as a matter of fact at the meet-

ing where the price maintenance was attempted to be made, the threat was made to bring in the Wil-Zip zipper to this territory and that the Wil-Zip zipper had been introduced in the East and then as a result of its introduction many small manufacturers had been put out of business.

It was the threat of this price-cutting zipper which was made if the three local manufacturers did not maintain certain minimum prices.

Mr. Leonard S. Lyon: Counsel hasn't stated what, if any, proof he expects to offer.

He has argued this matter on the basis that he has proven it but he took depositions and the witnesses denied that any such thing occurred.

Mr. Mockabee: We have depositions, your Honor, in the [355] case that support, I think support all my statements.

If I have made any that went a little beyond I didn't intend to and I don't think I did.

On the subject of control of the industry, which we seem to have gotten around to, plaintiff entered into license agreements with at least several companies, zipper manufacturers and while a patentee has a right to grant a license rather more or less under the terms as he wishes to dictate, we will show that agreements were entered into wherein the licensees of plaintiff were to all intent and purpose held to a production quota. They weren't prohibited from going over a quota in these agreements, but a quota was set and if they went a certain percentage over the quota what was called a royalty, sometimes amounting to 10 per cent of

the amount received by the licensee, was made payable and if they went a little further over the quota an even higher so-called royalty had to be paid.

One instance of that was the agreement between plaintiff and Conmar——

The Court: Exhibit 11 or 12? The first or second one?

Mr. Mockabee: That was the first Conmar agreement.

The Court: Exhibit 11.

Mr. Mockabee: Provided that Conmar should not exceed or that if it did exceed——

The Court: What page are you reading from? It is paged at the top. [356]

Mr. Mockabee: It starts on 79.

The Court: You must be referring to——

Mr. Mockabee: Page 6 of the Conmar agreement in the second or the first full paragraph on page 6. It starts at line 5. It says:

“The sales of Conmar for said year are found to be less than the quota for that year by an amount which is in excess of 25,000,000 slide fastener units.”

I beg your pardon, your Honor, I am a little ahead of myself. It is on page 5 of the Conmar agreement:

“For the calendar year 1940 the quota of Conmar shall be 52,000,000 slide fastener units, the same being approximately 25 per cent of the net sales of slide fastener units by Talon during the year 1939.”

In other words to all intents and purposes Con-

mar could not exceed—could not produce more than 25 per cent of the production of Talon for the previous year without paying a penalty.

That is the essence of it.

Now this contract——

Mr. Leonard S. Lyon: If your Honor understands, the quota was free. There was no royalty paid and if you went [357] above the quota you paid a royalty.

The Court: I understand that.

Mr. Mockabee: But Talon also, of course, received a free license, unrestricted, with no quota from Conmar.

Now, the plaintiff apparently seems to belittle or lend little importance to this quota question, but plaintiff and Conmar entered into a new agreement in 1951, June 7, 1951.

That is on page 90 of the plaintiff's answer to defendant's interrogatories, Exhibit 12, wherein the quota production was eliminated and there was more or less of a straight cross-licensing situation created.

The present suit was filed in 1949. The answer of defendant—I have too many papers here, your Honor, was filed——

The Court: Well, one answer was filed on August 11, 1950 and the amended answer and counterclaim was filed on April 19, 1951. That is the counterclaim.

Mr. Mockabee: 1951, yes, and the second Conmar agreement was in June of 1951.

The defendant intends to show that it had pre-

pared its amended answer and counterclaim and had held it—had not filed it for some time pending some discussions with plaintiff and that the filing of the answer and counterclaim contained charges of violation of the antitrust laws came roughly at the time the second Talon-Conmar agreement was entered into. [358]

The Court: You don't find fault with the second agreement, but you use it to argue the first one was bad.

Mr. Mockabee: No, I find no fault with that. It appears that the plaintiff is trying to purge itself before it got to trial.

There are other aspects of the counterclaim and probably some others on, particularly the Silberman patent situation, which are really more within the knowledge of Mr. Graham than they are of me and at this time I request permission for Mr. Graham to make a few remarks with regard to them.

One of the prior art patents——

The Court: Now, you are going to start offering some proof? I mean you are through with your opening statement?

Mr. Mockabee: I am going to discuss some of these patents, yes, sir, your Honor.

The Court: Well, let us do it that way. I haven't any objection to you as an attorney pointing out things for me to look at in these patents but I wanted to know when this opening statement was finished and when you are going to start talking about presenting a defense. [359]

Mr. Mockabee: I will consider this the close of my statement.

The Court: All right.

Mr. Mockabee: I am possibly more confused than you are, your Honor.

One of the prior art patents is Sundback '884, which has been marked for identification, has it not?

The Clerk: No. Do you want me to mark the whole group of your prior art all at once so you can refer to it by number?

Do you have it in a bound volume, or are they separate?

Mr. Mockabee: I will have to straighten it out for you.

The Court: Do you have them in the order in which you are going to refer to them?

Mr. Mockabee: Not to hand to the clerk right at the moment, no, sir.

The Clerk: Do you want to give the first number to the Sundback?

Mr. Mockabee: Sundback 1,331,884.

Mr. Leonard Lyon: I understood counsel to say that he had completed his opening statement. Is he testifying now, and are we going to be given an opportunity to cross examine him on the statements that he makes now?

The Court: I think what counsel has in mind doing is this. I am just guessing, certainly he is not going to testify, [360] but I think he is going to say that he offers in evidence Sundback '884—and

let's get rid of that, by the way. What is it, Defendant's E?

The Clerk: Yes.

The Court: Defendant's E received in evidence.

(The document referred to was received in evidence and marked as Defendant's Exhibit E.)

The Court: We have had testimony about it but never had it marked.

Then he is going to say that he directs the court's attention to Fig. 3, item 1, and calls my attention to various parts that work one with the other.

Is there anything wrong about that?

Mr. Leonard Lyon: I hope we don't get into the same difficulty that I experienced in Judge Cosgrove's court where the head of the defendant company wanted to be his own attorney, and Judge Cosgrove told him he had the right to do that, but he cautioned him about the difficulties that he might get into, and he went ahead anyhow, and when it came time for him to produce a witness, he announced to Judge Cosgrove that he was going to be his own expert witness. Well, that was almost too much for the judge, but he finally said, "If you will take the stand and ask yourself questions and then give answers so we can separate the questions and answers, why, that is all right." [361]

Well, we got along a little ways, and then he asked himself a question, which I objected to, and the judge asked for argument on the question, and after some considerable argument the judge over-

ruled my objection and turned to this man and said, "Now answer the question." And the fellow said, "Well, I can't remember what the question was."

The Court: I understand, Mr. Mockabee, you are not going to call an expert witness.

Mr. Mockabee: No, sir. I would much prefer to do so, but it is just financially impossible.

The Court: You have a very narrow orbit in which you can operate as a lawyer in this matter. You are not going to be able to testify. You can offer in evidence your prior art, and you can call the court's attention to diagrams and to parts of diagrams so that I can look it over, but I don't know that you can go much further than that.

Mr. Mockabee: I will do my best to stay within my bounds.

The Court: I think you could probably also say that as to Fig. 52 and Fig. 23, if the court will refer to column so-and-so, page so-and-so, of the specifications, you will see what happens, or read or call to my attention those parts of the specifications. But you are not going to be able to give your opinion as to what happens about one of these things.

Mr. Mockabee: I understand that. [362]

The Court: You are going to be stuck pretty well with what is in the drawings and the specifications and the claims. Do you understand?

Mr. Mockabee: Can I call Mr. Doble?

Mr. Leonard Lyon: Sure, we will loan you Mr. Doble if you want him.

Mr. Doble: I object.

The Court: You have the advantage that Mr. Doble doesn't have. You have the right, in a way, to argue, except you should postpone that argument until the time the case is closed.

Mr. Mockabee: I understand that.

The Court: We will take a recess at this time.

(Recess.)

The Court: All right.

Mr. Mockabee: There has been some discussion of Sundback '884 previously, and I will take that up at this time. That is Defendant's Exhibit E. On sheet 11, Fig. 19——

The Court: I don't see that the sheets are numbered.

Mr. Mockabee: Right under the date of the patent, your Honor.

The Court: All right. I see it.

Mr. Mockabee: There is shown a metal strip 1 in which is located a series of five slide fastener elements, some of which are partially formed and the right-hand element of which [363] is illustrated astraddle the bead 44 of a zipper tape. This particular element is shown with the usual recess-projection formation, which is unnumbered, but indicated by a double lined rectangle with rounded corners.

This patent, which issued in 1920, teaches the idea of forming slide fastener elements from a strip in end-to-end relationship, and they are shown in Fig. 19 to be held in a fixed position until they are placed astride the rib 44 of the fastener tape.

In this patent there is no mention of maintaining the leading element integrally connected with the material of the strip until it reaches the tape at the point where Poux teaches final severance and clamping, but it does show the maintenance of position until that point is reached and the element is clamped.

Mr. Leonard Lyon: I beg your pardon. I don't like to interfere so early in Mr. Mockabee's statement, but it seems to me he is right away getting into—instead of showing us where something is stated in the patent by calling attention to a figure of the drawing, or a line or lines in the specification, he is giving his opinion about what the patent teaches.

I think he used the word "teach."

Mr. Mockabee: Do you think that I have mentioned anything that doesn't appear in the patent?

Mr. Leonard Lyon: I just don't want you to get into bad [364] habits, because I am afraid you will.

Mr. Mockabee: I am trying to be very careful not to do that.

Mr. Leonard Lyon: We haven't any chance to cross examine, and therefore I thought your Honor indicated very definitely the limits of the statement.

The Court: Yes. It will have to be limited.

There is a difference in different kinds of statements. If there was an admission that nothing appeared in a patent on a certain matter, such as you just made a minute ago, that nothing appeared in the patent about holding the leading element into position until the clamping occurred, that is not

objectionable, because that is an admission against your interest. But a similar statement that nothing appeared in the patent on some other point would be clearly your conclusion, unless it was made as an admission, and then it gets you into the field of doing more than testifying.

Of course you could offer all these patents in evidence, and then at the time of argument you could go further in the argument than you could in the record.

Mr. Mockabee: I would like to point out a few things. I was trying to be helpful, and I think the only place where I may have stepped beyond the bounds was where I did admit that a certain element of the Poux method was not disclosed.

The Court: That is all right. That is an admission there [365] against your interest, in a way; you are admitting the limited scope of Sundback.

Go ahead. Let's see how we can get along.

Mr. Mockabee: That patent has been offered in evidence, hasn't it?

The Court: It has been received.

The Clerk: The court received that in evidence before the recess.

Mr. Mockabee: Sundback No. 1,947,956.

The Clerk: I will mark that as Defendant's Exhibit F.

The Court: Received in evidence.

(The document referred to was received in evidence and marked as Defendant's Exhibit F.)

Mr. Mockabee: This patent, while issued in 1934,

is based upon an application dated December 19, 1928. On sheet 2 of that patent, Fig. 6, is an exploded view showing a head 15, and quoting from the specification, page 2, column 1, beginning line 52:

“The press has a suitable head 15 which is mounted for reciprocation toward and away from the bed 10, and this head carries punches 16 and 17, which are aligned with the die openings 11 and 12 of the bed, and punch 18, which is aligned with the die recess 14, and which has a point which conforms to the recess 2 of the fastener element. [366] The head 15 also has a punch 19 which is in alignment with and conforms to the die opening 13 of the bed.”

I beg your pardon. I referred to Fig. 6 of sheet 2. It is Figs. 5 and 6 considered together.

Fig. 5 shows a strip, and it shows punches formed in that strip. These punched formations being located beneath the punch elements 16, 17, 18 and 19.

I now offer in evidence patent No. 1,533,352, issued to Smith.

The Court: It will be Exhibit G received in evidence.

(The document referred to was received in evidence and marked as Defendant's Exhibit G.)

Mr. Mockabee: This patent is directed to a method of making paper box fasteners and issued in 1925. It shows a strip of stock 20, and in Fig. 2 there is a perspective view of the stock material illustrating in progressive sequence the various

punching operations performed thereon to make a box fastener.

The Court: Now, the significance that you have attached to this one is the fact that it shows that metal units can be cut off by a punching method. There is nothing here about fastening it on.

Mr. Mockabee: I am going to get to something on that in the specification.

The Court: In this patent? [367]

Mr. Mockabee: Yes.

The Court: All right.

Mr. Mockabee: Figs. 4 and 5 show a die head 26 which carries on its underside several male dies which are adapted to cooperate with a female die or die plate 27. [368]

In order to bring out a point in the specifications it will be necessary to quote from page 2 and I believe we can start on column 2 at about line 108.

Some previous operation upon the strip has been described, your Honor, and rather than go through the whole series, which is illustrated in the drawing, I will start at line 118:

“The next operation is performed by raising the strip and advancing it forwardly to position the two pairs of prongs 12 and 14 in register with a second pair of rectangular openings 33 in the die plate 27.

“This locates the outer or lower end of the fastener directly over a small male die 34 in the die plate 27, which male die 34 is conformed to punch out the pointed tip of the tongue 11 from the outer end of the outermost fastener unit.

“Co-operating with the die 34 is a spring pressed plunger 35 which is shaped similarly to the die 34 and which is embraced by a female die member 36 which is adapted to move down over the margins of the male die 34 and perform the operation of punching out the end of the tongue 11.

“In the performance of this latter punching operation it will be noticed that the adjacent pairs of prongs 12 and 14 are thrust downwardly into the pair of openings 33 and are thus prevented from being turned over or injured. [369]

“The fasteners may be secured directly to the body of the box at this point or may be discharged into a hopper for packing.”

I would like to now offer a soft copy of Johnson patent No. 1,731,667.

The Court: What are you offering?

Mr. Mockabee: I am afraid we are out of duplicate copies on this Johnson patent, your Honor. I don't believe I have a duplicate of it.

The Court: Does the plaintiff have a book of patents that they are going to put in later?

Mr. Leonard S. Lyon: No. I don't think we have quite the same patents in any particular book that Mr. Mockabee is referring to.

Mr. Charles W. Lyon: We have all the patents pleaded in the answer and cited in the file wrapper in these two books.

The Court: What is the number of the Johnson patent?

Mr. Mockabee: 1,731,667.

Mr. Leonard S. Lyon: We have a set of books

made up here. It might help your Honor if I hand them to you. They are volumes 1 and 2 and they contain copies of all the patents cited in the Patent Office and the file wrapper and those referred to in the defendant's answer. [370]

Mr. Charles W. Lyon: "Answer" is a mistaken word there, Leonard. There were no patents set up in the answer. They were elicited from them on an interrogatory.

Mr. Leonard S. Lyon: Yes, that is right.

The Court: Johnson patent No. 1,731,667 will be received as Exhibit H.

(The document referred to, marked Defendant's Exhibit H, was received in evidence.)

The Court: Now, if I can find it here counsel can have the original.

Mr. Charles W. Lyon: They are in alphabetical order, your Honor.

The Court: I have found it.

Mr. Mockabee: Your Honor, I might explain I didn't receive this art until just a very short time ago. I ordered duplicate copies of patents, some of which I received from Washington and some I have not.

The Johnson patent issued in 1929 and discloses a method of making and attaching fastener elements.

In Figure 6 there is illustrated a plan of a portion of a strip of the fastening elements before they are attached and showing how they are connected.

On page 2, column 1, beginning at line 5 it is stated:

“The object of forming the fastener elements in strips is to provide for accurate spacing of the [371] elements upon the part which carries them so that they will make positive engagement with co-operating fastener elements with the least possible amount of effort when the slider 5 is moved along the two rows of fastener elements.

“This method of attachment is also very simple and the fastener elements are very easy to handle when provided in strips.”

Without discussing it, your Honor, that is all I have to say.

The Court: Is there anything in this patent that shows how these strips were made or do we just assume they were made and then it shows how they were fastened?

Mr. Mockabee: It says “The strip is thereafter pressed into the form”. Oh, no, pardon me.

“The strip 8 may be formed and attached in any suitable manner.”

That is all it says there. But this is not a patent, pardon me, this is a patent method.

The Court: All right.

Mr. Mockabee: Your Honor, I am a little bit stuck here because I can't open my mouth without going into these patents and if you will, as you indicated, close early today I would appreciate it a great deal because I think I could change my thoughts on talking a little bit about these [372] patents.

The Court: How many more patents do you have?

Mr. Mockabee: Oh, there are probably a half a dozen more at least.

The Court: Well, you probably over the evening can work it out.

Mr. Mockabee: That is what I meant, yes. Every time I open my mouth I want to start discussing them.

The Court: All right, we will take an adjournment until 9:30 tomorrow morning. Mr. Graham will be here at 9:30?

Mr. Mockabee: Yes, he is expected here early tomorrow morning.

The Court: Very well, we will recess until 9:30 o'clock tomorrow morning.

(Whereupon, at 3:40 o'clock p.m. a recess was had until 9:30 o'clock a.m., Friday, March 4, 1955.) [373]

Friday, March 4, 1955; 9:30 A.M.

The Court: Call the case.

The Clerk: No. 10450 Civil, Talon, Inc. vs. Union Slide Fastener, Inc. for further trial.

The Court: You may proceed.

Has Mr. Graham arrived?

Mr. Mockabee: I was just going to say, Judge Carter, this is Mr. Graham whom I believe you met at the pretrial hearing.

The Court: Has he been admitted for the purpose of this case?

Mr. Mockabee: Yes, at the time of the pretrial.

Mr. Graham: Yes, your Honor, at the pretrial conference.

The Court: All right.

Mr. Mockabee: Continuing with the offer of prior art patents on the part of the defendant, I wish to offer in evidence a soft copy of the patent to Hommel, 1,659,266, February 4, 1928.

The Court: It will be received as Exhibit I.

(The document referred to, marked Defendant's Exhibit I, was received in evidence.)

Mr. Mockabee: This patent relates to a machine for forming metal fasteners and includes a description of the manner of their formation. [376]

It includes a metallic ribbon feeding mechanism. It also shows a base 27, a shaft 119, a ram 38.

The Court: You are looking at Figure 3, are you not?

Mr. Mockabee: I was referring at that time to Figure 4, your Honor, where I think those parts are more clearly set forth.

The Court: Figure 4 is a very small figure.

Mr. Mockabee: Figure 3, I beg your pardon. And as indicated on Figure 2 an element 124 which connects the ram to a bearing on the shaft 119.

The ram carries a mechanism in the form of a die forming member 41 and 42, and there is shown in Fig. 5 in cross section a wire 32 about which a portion of the metallic ribbon is bent or crimped.

Then referring to Figure 7, the end of the metal ribbon designated 28 in that figure, is shown in dotted lines above the wire and in full lines bent at approximately right angles over the wire and then below that the bent portion of the metal rib-

bon is shown in its final crimped or clamped shape about the wire.

A showing of the finished fastener element is in perspective in Figure 9. [377]

Also offered as Defendant's Exhibit J is a soft copy of the patent to Binns 2,026,413.

The Court: It will be received in evidence as Defendant's Exhibit J.

(The document referred to was received in evidence and marked as Defendant's Exhibit J.)

Mr. Mockabee: This patent shows cam actuated jaw closing members 50.

The Court: What figure are you looking at?

Mr. Mockabee: I ran out of copies of that.

The Court: You take it, and I will get it out of this book. You keep it. I can look at this one here.

Mr. Mockabee: It is on sheet 16, Fig. 38.

The Court: It shows what?

Mr. Mockabee: Cam actuated jaw closing members.

The Court: I don't see the figure 50. What you have circled is 489.

Mr. Mockabee: I beg your pardon, your Honor. It is 504 at the bottom of the page.

The Court: All right.

Mr. Mockabee: Those members 504 extend down at the lower part of the page.

A ram 18 carrying forming tools 22, 23 and 24. This patent also shows a finger 47 for positioning a formed element relative to the tape wherein the

finger is carried [378] by a member slidably mounted and having a slanted cam surface on its end in contact with a cooperating cam surface on the lower end of a cam rod, which is carried by the ram 18.

This latter construction, your Honor, is not on that same figure.

The Court: That doesn't mean anything to me from what I have seen from looking——

Mr. Mockabee: I got a little mixed up looking at this patent here.

The Court: (Continuing) ——from looking at Fig. 38. If you want me to understand it, you will have to point out more than that.

Mr. Mockabee: I was confused with a different patent.

The Court: Are you going to start over again?

Mr. Mockabee: We will ignore the description of Binns. I was confused with the following patent that I was going to introduce.

The Court: Are you now going to describe Binns?

Mr. Mockabee: Yes.

The Court: All right.

Mr. Mockabee: It shows the cam bar 504 on sheet 16, Fig. 38, which engage through cam surfaces 506 on the cam bar. That is an arcuate portion in about the center of the figure, an arcuate cut-out.

The Court: Yes, I see it. [379]

Mr. Mockabee: Within which rides a cam 495.

The Court: Yes?

Mr. Mockabee: On the jaw closers 485, 489. The

jaw closer assembly is two elements, 485 and 489.

The Court: Yes. [380]

Mr. Mockabee: I now wish to offer a soft copy of the patent to Taberlet, 2,294,253 as Exhibit K.

The Court: Received in evidence as Defendant's Exhibit K.

(The document referred to, marked Defendant's Exhibit K, was received in evidence.)

Mr. Mockabee: This is the patent which has jaw closing members 50.

The Court: What figure are you looking at?

Mr. Mockabee: The first figure there.

The Court: Figure 1. All right.

Mr. Mockabee: With a ram 18 which carries forming tools 22, 23 and 24.

Also offered is another patent as Defendant's Exhibit L.

The Court: The forming tools are shown in Figure 2.

Mr. Mockabee: Yes, your Honor. In further respect to that patent, in Figure 2, there are cam surfaces slanted on a member which reciprocates horizontally and engages one of the elements on the tape to hold that element in position while it is being fixed.

Defendant offers as Exhibit L——

The Court: From a reading of this patent what field is this in? Is it a fastener? Is it a fastening machine? What type of field is it in?

Mr. Mockabee: That is a slide fastener machine, your Honor. [381]

The Court: It is a slide fastener?

Mr. Mockabee: Yes.

The Court: To make zippers?

Mr. Mockabee: Yes.

Defendant offers as Defendant's Exhibit L a soft copy of the Wintriz patent.

The Court: How do you spell that?

Mr. Mockabee: W-i-n-t-r-i-z, 2,201,089.

The Court: Received in evidence as Defendant's Exhibit L.

(The document referred to, marked Defendant's Exhibit L, was received in evidence.)

Mr. Mockabee: This patent issued in 1940 and discloses a method and machine for making slide fasteners.

For purposes of conciseness references made to a recitation of the operation as in claim 15 on page 11 beginning on line 74.

The Court: Claim 15, page 11?

Mr. Mockabee: Yes, your Honor. It is stated that the severing and clamping operations are performed at about the same time.

Then again referring to claim 46 on page 16, beginning at line 2 there is recited:

"And means to clamp the jaws of the end-most element [382] to the tape as it is severed from the wire."

The Court: What is this? It starts out as a piece of wire stock and then it is meshed into shape.

Mr. Mockabee: The form is what they call embryos—partially formed elements previous to the final operation.

The Court: You mean they are partially formed and then put through the machine?

Mr. Mockabee: Yes, sir, in a different part of the machine and they are not formed at that point.

The thing I wish to point out there is the relationship between the severing of the formed elements and their application to the tape.

The Court: All right.

Mr. Mockabee: Defendant offers as Exhibit M a copy of the Sundback patent 1,467,015 granted in 1923.

The Court: Received in evidence as Defendant's Exhibit M.

(The document referred to, marked Defendant's Exhibit M, was received in evidence.)

Mr. Mockabee: On sheet 7 of the drawing are shown clamping members 47.

The Court: Just a minute. All right.

Mr. Mockabee: Which have levers 69 connected thereto and these levers are engaged by cams 72 which actuate or operate the element clamping members. [383]

The Court: All right.

Mr. Mockabee: I wish to offer a soft copy of the patent to Murphy as Defendant's Exhibit No. N.

The Court: It will be received in evidence.

(The document referred to, marked Defendant's Exhibit N, was received in evidence.)

Mr. Mockabee: This patent No. 1,664,480 was issued in 1928.

In Fig. 1 it shows a base 2, a ram 11, a crankshaft 3, a connecting rod 9 and in Figs. 4 and 5 a

forming punch 13 on the ram 11 and a finish forming and cut-off punch 14 also carried by the ram.

The Court: You say in Figure 4 and 5?

Mr. Mockabee: Yes, I believe that is correct.

The Court: Read that statement back, Mr. Reporter.

(Statement read.) [384]

Mr. Mockabee: I wish to offer in evidence as Defendant's Exhibit O a soft copy of Loew, patent No. 2,444,706.

The Court: Received in evidence as Exhibit O.

(The document referred to was received in evidence and marked as Defendant's Exhibit O.)

Mr. Mockabee: The application for this patent was filed prior to that of the Silberman patent in suit.

Mr. Leonard Lyon: I might say, your Honor, that the evidence that has been given by Mr. Meech, and evidence that will be given in rebuttal, show that this patent does not antedate the actual making of the invention by Silberman.

Mr. Mockabee: Your Honor, I am not permitted to discuss the merits or the rights or the claims to the dates of invention at this time. I am going by what is on the faces of those patents.

The Court: It is your contention that the filing date of August 12, 1944, antedates the issuance—

Mr. Mockabee: The filing date of the Silberman patent.

The Court: —the filing date of the Silberman?

Mr. Mockabee: Yes, which was filed the following month, in September of the same year.

The Court: What is this rebuttal going to show, Mr. Lyon?

Mr. Leonard Lyon: I am not objecting to——

The Court: What is your rebuttal going to show?

Mr. Leonard Lyon: It is going to show that Mr. Silberman made his invention prior to the filing date of this Loew patent. In fact, Mr. Meech already has testified that he saw the machine at Mr. Silberman's plant earlier than this filing date.

Mr. Mockabee: Until you have some proof with regard to that, your Honor, I am standing, at this point, on the respective filing dates.

The Court: Wait just a minute.

All right. What about Loew?

Mr. Mockabee: It discloses a machine for forming slide fasteners and includes a punch 6 with which the underlying die 4 forms the recesses and projections of a slide fastener element. It shows a punch 21, which notches and severs the material of the element, and it shows a cam 34 for one of the jaw closing members 33. The severing punch and the jaw closing cam are both carried by the ram 1.

The patentee states, "In order that the element"——

The Court: Where are you reading from?

Mr. Mockabee: I beg your pardon. I would have to check that.

The Court: Well, it is a short patent. Go ahead and read it.

Mr. Mockabee: The fact is, your Honor, that I was a little bit late in getting prepared on some of these prior [386] patents, of which I did not have duplicate copies and have not yet received them from the Patent Office, and I was in the office 25 minutes to 5:00 this morning trying to get this better organized, and I haven't quite done it, I can see.

The Court: Read what you have in mind.

Mr. Mockabee: I will have to borrow your copy of the patent.

The Court: You were going to read something.

Mr. Mockabee: I haven't a copy of it.

The Court: Read it subject to correction. We will assume you are reading it from the patent.

Mr. Mockabee: "In order that the element that is to be cut off be held stationary, while it is being attached to the tape, the cams that close the hammers now engage the said hammers so that the closing of the element jaw upon the tape takes place before the shearing off of the element is completed."

The Court: Well, that begins at page 2, column 1, line 70, "In order that the element * * *"

Mr. Mockabee: Yes.

I was trying to make the notation and get the citation and do it before breakfast, and I had a little trouble doing it.

The Court: All right. Who owns this patent?

Mr. Mockabee: As far as I know, it is owned by Sigmund Loew. [387]

The Court: You don't know whether the machine is being made?

Mr. Mockabee: I do not. Testimony may bring that out.

Mr. Graham: If I may interject a remark, Mr. Lipson tells me that he has a license, Union Slide Fastener Company, the defendant in this action, has a license under the Loew patent.

The Court: Is that going to be introduced in evidence?

Mr. Graham: That will be introduced in evidence.

Mr. Charles Lyon: In that connection, your Honor, I might point out that there has been a lawsuit between Mr. Sigmund Loew and the Union Slide Fastener Company over that very matter, which was settled by an arbitration.

The Court: All right.

Mr. Mockabee: I think that completes the prior art. We would like to submit, possibly, some copies of some of the others, merely to show the general state of the art, at a later time.

Mr. Charles Lyon: While we are at this intermission, your Honor, yesterday we offered as Plaintiff's Exhibit 13 Sundback 1,467,015. I didn't have a loose copy to hand to the court, and the only way I can get one would be by taking one of these books apart, and the same patent has been received in evidence as Defendant's Exhibit M: I don't see any [388] point in having it in twice. So can we withdraw Plaintiff's Exhibit 13?

The Court: Or we can mark the same exhibit with both exhibit numbers.

Mr. Charles Lyon: All right. So I won't have to take one of those books apart.

The Court: That is Exhibit M and exhibit what—13?

Mr. Mockabee: Plaintiff's Exhibit 13.

The Court: —are the same. All right.

Mr. Mockabee: If the court please, would it be possible to call a 15- to 20-minute recess for the purpose of letting Mr. Graham complete his preparation for the cross examination of Mr. Meech?

The Court: Yes, we can take a recess. You are going to be hurried next week.

Mr. Mockabee: Mr. Graham didn't arrive at the airport until 7:00 o'clock this morning and I have had about five minutes time talking to him.

The Court: I understand. I will grant you the recess.

He could have been here the day the trial started, and he could have been here the week before.

Mr. Mockabee: I don't think his commitments made it possible.

The Court: I don't know what his commitments are, but this case has been set for a year on this date. [389]

I am going to grant you your recess, but this time we waste, we are going to move along.

Mr. Mockabee: We will do everything we can to proceed as promptly as possible.

The Court: All right. We will take a short recess.

(Recess taken.) [390]

Mr. Charles Lyon: If the court please, in reading the transcript of yesterday's proceedings, on page 324 of the record there is, I believe, a typographical error in line 9, as my question to the witness was, I am quite certain and I believe the context of the preceding and succeeding testimony will show. I referred to June 1944 and the record has it as June 1945.

I wonder if we may have a stipulation and the record may be corrected in that regard?

The Court: All right.

Mr. Graham: I am not familiar with it, your Honor. Mr. Mockabee would be able to answer that. He just went out for a short while.

If you will reserve that I am sure he will stipulate to it.

The Court: All right, let us proceed.

Mr. Graham: If your Honor please, I don't want to take up the court's time with explanations or apologia.

It is a fact that I have been in this case for some time. However, it has also been understood between myself and Mr. Lipson, that Mr. Fulwider was to handle the trial of this action.

Throughout the defendant has been handicapped financially and Mr. Fulwider, as he had the right to do, withdrew from the case only a couple of months ago. [391]

Then Mr. Lipson hired Mr. Mockabee and told me that because of the expense involved that he would prefer to have Mr. Mockabee attend the trial.

Just before the trial started on Tuesday I wrote

to Mr. Lipson and said in spite of his financial difficulties if he felt that he needed me I would be glad to come out here and here I am.

I am at some disadvantage, not having—I am at some disadvantage in being about to cross examine a witness whose testimony I did not hear.

However, I have notes made by Mr. Lipson and by Mr. Mockabee and some of my own notes and I think that if you will bear with me I will try to be as brief as possible and as direct as possible.

The Court: You have another alternative. If you want to go ahead with other parts of the defendant's case you may do so. You will have the weekend in which to read the testimony and then conduct your cross examination on Tuesday, if you have other witnesses to go forward with. Just suit yourself.

Mr. Graham: I think we might just as well go forward, your Honor. Thank you for the opportunity.

The Court: Mr. Meech. [392]

RALPH E. MEECH

a witness called by the plaintiff, having been previously sworn, resumed the stand and testified further as follows:

Cross Examination

Q. (By Mr. Graham): Mr. Meech, I believe that you have testified that you first met Mr. Silberman, the inventor of the Silberman patent in suit, in the spring of 1944.

(Testimony of Ralph E. Meech.)

A. That is correct. I would say around April.

Q. And at that time you stated that Mr. Silberman had three operating machines?

A. That is correct. They were operating and producing stringer tape at the time I saw them.

Q. And were those machines substantially the same as the machine shown in the Silberman patent in suit? A. That is correct.

Q. Where were those machines located, Mr. Meech?

A. Those machines were located—I don't know the address, the correct address but in Cooper Square in New York City.

Q. In the office of some company?

A. Now, I don't know whether it was an office of a company or not or whether Silberman had a company at that time. It may have been Kap-Tin Development Company. I do not recall the name of the company. [393]

Q. But it was Mr. Silberman's place of business? A. That is correct.

Q. And did you inspect those machines? See them operate?

A. Yes, they were operating and producing tapes.

Q. Did you ask Mr. Silberman who had built the machine? A. I did not.

Q. Did you know who built them?

A. I did not.

Q. You weren't at all interested in who built the machines?

(Testimony of Ralph E. Meech.)

A. I presumed that Mr. Silberman had built the machines but I, of course, did not know for sure that he built them, no.

Q. Did he ever say anything about the machines having been built at the—or assembled at the Herod Fastener Company? A. No, he did not.

Q. Just outside of Philadelphia?

A. I knew nothing of the Herod Manufacturing Company.

Q. Did you know anything of the Southern Engineering and Metal Products Company?

A. I did not.

Q. Did you know whether Mr. Silberman had any employees at that time? [394]

A. The only employee I knew at that time that he had was, I think he was secretary of the company and he was an attorney of the name of Max Greenberg.

Q. Did Mr. Silberman ever mention to you the name of John Havekost? A. He did not.

Q. Did he show you any drawings of these machines? A. No, he did not.

Q. He just showed you the machines and you inspected them? A. That is correct.

Q. What was the purpose of that visit and that inspection, Mr. Meech?

A. The purpose of that visit was to formally notify Mr. Silberman of the existence of certain patents owned by our company and that we intended to protect those patent rights that we owned.

(Testimony of Ralph E. Meech.)

Q. Did you tell him that he was infringing on any of those patents?

A. I do not recall. I may have at that time and I may not have. I do not recall.

Q. Well, after you inspected the machines did you feel that they were infringements?

A. Yes, I did.

Q. What particular patent or patents? [395]

A. One of the patents in suit—that is namely the Poux patent '017 and others belonging to our company.

Q. Did he discuss the question of his or your assertion that he was infringing?

A. In a broad way but I think at that time he had an opinion from his attorney.

Q. Do you think he had an opinion or do you know that he had an opinion?

A. I do not know. I just assumed that he did have from the way he talked.

Q. Did he admit that he was infringing?

A. No, he did not admit that.

Q. Did he deny that he was infringing?

A. He didn't deny or didn't admit, neither one.

Q. Well now, following that conference did you have any other talks with Mr. Silberman regarding Talon taking over his machines?

A. At that time we had numerous meetings, after that, for the purpose of negotiating and following those negotiations an agreement was entered into the following year. [396]

Q. Is that agreement in evidence?

(Testimony of Ralph E. Meech.)

A. Yes, it is.

Mr. Leonard Lyon: Exhibit 7, I think.

The Court: That is Exhibit 7 in evidence, an agreement of July 16, 1945. It was superseded by a further agreement, Exhibit 8 in evidence of April 18, 1949.

Mr. Graham: Thank you.

Q. (By Mr. Graham): Now, under the terms of the agreement in evidence as Exhibit 7, was a license granted by Silberman to Talon?

A. That is correct.

Q. For the use of his machines?

A. That is correct.

Q. And was there an option in that agreement for Talon to buy any invention or any patent that might mature from his application for patent?

A. I don't recall whether it was part of that agreement or whether it was a separate option agreement, but there was an option.

Q. There was an option?

Mr. Charles Lyon: I think we offered the option as part of Exhibit 7, if I recall correctly, your Honor.

The Court: Just a minute.

No. The option is contained—what you are talking about is contained in No. 8. Exhibit 7, unless there is some terminology [397] that talks about option—Exhibit 8 has a page called "Option" attached to it.

Mr. Graham: I think we can pass the point, your Honor.

(Testimony of Ralph E. Meech.)

The Court: All right.

Q. (By Mr. Graham): Before this agreement of July 16, 1945, did you discuss with Mr. Silberman whether or not he had an application for patent on the machine that he showed you?

A. I discussed it with him and he said that he planned to apply for an application. I don't believe that the application was filed at that time.

The Court: Wait just a minute.

Mr. Graham: Shall I go ahead, your Honor?

The Court: No. Just a minute. I am trying to figure something out here.

Exhibit 8 runs from page 43 to 56 inclusive of the Answers, is that right?

Mr. Charles Lyon: That is the way I understand it, your Honor.

The Court: Exhibit 7 runs from page 57, I have listed here, to 65. Now there follows some other material with some dates in '48, and so forth, beginning at page 66, that is obviously not a part of Exhibit 7. Is that right? Exhibit 7 is dated July 16, 1945, obviously page 66 and following, 66 bearing the date of June 3, 1948, couldn't be a part of Exhibit 7. [398]

Mr. Charles Lyon: You are correct.

The Court: All right. Go ahead.

Q. (By Mr. Graham): Did the agreement of July 16, 1945, provide for payment of a royalty by Talon to Mr. Silberman?

A. It is hard to answer these questions without a copy of the agreement before me.

(Testimony of Ralph E. Meech.)

The Court: Well, the agreement speaks for itself.

What was your question—a royalty which way?

Mr. Graham: Was a royalty payable by Talon to Silberman.

The Witness: No, there was no royalty payment from Talon to Silberman that I recall.

Q. (By Mr. Graham): By that agreement?

A. That's right.

Q. At that particular time when the agreement was made, is it a fact that Talon had decided not to sue Mr. Silberman for infringement of Poux patent '017?

A. There was no decision one way or the other, whether they would sue him or not sue him. We were trying to be fair with him and offer him a license under these patents that we felt in our opinion that he was infringing, and which he of course acknowledged by taking a license that he did infringe.

The Court: Well, that is a conclusion, isn't it?

Mr. Graham: I will object to that, your Honor.

The Court: It may go out. [399]

Mr. Graham: I move that the answer be stricken.

The Court: It may be stricken.

Q. (By Mr. Graham): I believe you testified that the Silberman machine that you inspected represented an improvement over other zipper manufacturing machines.

A. Yes.

Mr. Leonard Lyon: I don't think this witness was put on to discuss the prior art. He did compare

(Testimony of Ralph E. Meech.)

the machine with the plaintiff's other commercial machines.

The Court: He said a lot of things that would come generally under the head that this machine was an improvement. He told about how much faster it was, and production was cheaper, and so forth. The objection is overruled. He did not, however, discuss prior art.

Mr. Graham: I don't intend to go into that.

The Court: The cross will be limited to his general statement about this superior machine.

Q. (By Mr. Graham): Will you state, Mr. Meech, in what respects the Silberman machine was in your opinion an improvement over the other machines at that time?

A. The Silberman machine as exemplified in the '793 machine, the patent in suit, was the first machine brought to my attention wherein a flat strip was fed into the machine and you got a complete zipper at the other end. In other words, the forming of the heads and projections and the forming [400] of the element and the cutting off from a complete strip that had not been pre-formed was an advancement in the industry in a high speed machine such as he had.

Q. Was the basic construction of the machine, the principle of the machine, punch press and die block operation, was that principle any different in the Silberman machine than it had been in the Sundback machine, for instance?

A. No, it was a completely new machine built

(Testimony of Ralph E. Meech.)

up. It was not a punch press type machine. You cannot employ a punch press type machine for high speed. A punch press will only operate at about 450 to 600 r.p.m.

The Court: When you talk about punch press, now are you talking about punch press in the zipper industry or are you talking about punch presses generally?

The Witness: Punch presses generally.

The Court: Will only operate four to five hundred r.p.m.?

The Witness: That is my opinion.

Q. (By Mr. Graham): At the time you inspected the Silberman machine, did Talon have an agreement with Conmar Corporation?

A. It did.

Q. And under the terms of that agreement wasn't Talon authorized to use certain of the Conmar patents which provided for a high speed operating machine? [401]

A. They were, which they never used.

Q. What?

A. They were, but they never used those patents.

Q. I think you said that one of your reasons for interest in the Silberman machine was because of its high speed operation.

A. That is correct.

Q. Was it a higher speed than the Conmar machine? A. Definitely so.

Q. By what percentage?

A. The Conmar machines at that time—in the

(Testimony of Ralph E. Meech.)

first place, the Conmar machines employed pre-formed strip. What I mean, they had a prior rolling operation on the strip which formed the heads and the projections in the strip. Their machine actually as known in the trade was not a chain machine. It was really an attaching machine, in that all that the machine did was cut the elements from the end of the strip and attach them to the tape. That machine, even for that purpose, only operated between 1,800 and 2,000 r.p.m.

The Court: I have a question.

What patent, if you know, did Conmar operate under with this machine?

The Witness: Conmar changed their operations quite frequently during the first two or three years of operation, and it is difficult to tell which one they operated under at the [402] time we gave them a license, but it was one of the Wintritz patents, possibly the one that is made of record in this case.

The Court: I am speaking of specific machines, I am talking about these machines that you just mentioned that used pre-formed strips and were an attaching machine that cut from the strip the units and attached to the tape and operated about 1,800 or 2,000 r.p.m.

The Witness: It is the type of machine shown in the Wintritz patent. I think they are of record, are they not?

Mr. Graham: The Wintritz patent is of record.

(Testimony of Ralph E. Meech.)

Mr. Charles Lyon: Exhibit L, do you mean? 2,201,068?

The Court: Is this the one you mean?

The Witness: Yes, sir, that is generally the type of machine that I am referring to. [403]

The Court: All right, go ahead.

Q. (By Mr. Graham): What was the speed of the Silberman machines that you saw in the spring of 1944?

A. The speed of that machine was somewhere in the vicinity of 2,000 r.p.m.'s.

Q. So that it didn't differ substantially from the speed of the Conmar machines?

A. Not at that time but that machine was later developed—that is groomed and a second version of the machine was developed which had a theoretical speed of 3,600 r.p.m.'s.

Q. But I am only talking now, Mr. Meech, about 1944, the spring of 1944. I am not talking about 1954.

A. At that time his machine operated at around 2,000 r.p.m.'s.

Q. And that was not substantially different from the then speed of the Conmar machine?

A. That is correct.

Q. Now eventually Talon bought the Silberman patent in suit? A. That is correct.

Q. Now, before the patent was purchased had you done any investigation with regard to the Silberman application and the prosecution of the application through the Patent Office?

(Testimony of Ralph E. Meech.)

A. Yes, I had. I had inspected the application and had [404] seen a copy of the application.

Q. Had you seen the file wrapper?

A. I had not seen the file wrapper.

Q. You didn't investigate that at all?

A. I did not.

Q. Now, at the time you were dealing for the purchase of the patent you knew that Mr. Silberman had been characterized by a United States District Judge in New York in some words to the effect, and I believe it is in the record, that he was a commercial pirate, did you know that?

A. I think I did at that time or it may have been later. But it did come to my attention.

The Court: It is not in the record except as an opening statement of counsel.

Mr. Graham: We will get you a certified copy of that opinion, your Honor.

The Court: That wouldn't be binding. It wouldn't have any evidentiary effect, what some other judge called him.

Mr. Graham: Only as to what the judge said, your Honor.

The Court: The only bearing it would have would be as to the mental attitude of the Talon company, if they knew some of these things.

It would be one of the factors that they considered or did not consider when they bought the machine but it certainly proves only what the judge said and has no bearing on the [405] direct issue in this case.

(Testimony of Ralph E. Meech.)

Mr. Graham: I understand that, your Honor. I believe the witness has answered that he did know.

The Court: Yes.

Mr. Graham: That such a statement had been made.

Q. (By Mr. Graham): Well, didn't that make you rather cautious in dealing with Mr. Silberman?

A. In what respect?

Q. Well, if you felt that he had been severely criticized by a judge for commercial piracy wouldn't you be just naturally as a matter of good business, very cautious in dealing with him—be sure what you were buying was not something that he had pirated from someone else?

A. Well, at that time we were reasonably sure that he didn't pirate it from anyone else because in our opinion he had learned his lesson and he had spent considerable amounts of money on development, which we investigated and we knew that. And as far as we knew and we still think that David Silberman is the inventor of that machine.

Q. What you have just said is your ultimate conclusions. You say you did do some investigating and that is what I would like to know. What investigating was done?

A. His employees, his place of business and his financial record.

At that time we were interested in his new machine and [406] getting our patents recognized and he had done no harm to us and I don't know that

(Testimony of Ralph E. Meech.)

we were too much influenced one way or the other by the decision of Judge Woolsey.

Q. Well, did you discuss the matter at all with the attorney who had prosecuted Mr. Silberman's application in the Patent Office?

A. Discuss what?

Q. The matter of the application, the validity of the patent and the invention.

A. Yes. We discussed it because I had to discuss it with the attorney to get access to the application.

Q. Well, did you have a full discussion with him?

A. I don't know what you mean by "a full discussion."

Q. Well, I don't want to try to tell you what you said to him. All I am asking you is what did you discuss? A. I don't recall.

Q. What subjects were discussed?

A. That I do not recall.

Q. Well, did you discuss the subject of the application? A. Definitely.

Q. And that you wanted to see it?

A. The particular thing we were interested in at that time was that——

Q. Was there any discussion between you and that attorney, and I think we should name the attorney for the [408] record, I believe it is Henry Burkitt of New York City.

Was there any discussion at that time about somebody having infringed the patent before it was

(Testimony of Ralph E. Meech.)

issued so that the application had to be made especially in the Patent Office?

A. No, no such disclosure was made to me.

Q. And you didn't know about the case—you stated you didn't look at the file wrapper?

A. That is correct.

Q. So that you really didn't make too much of an investigation then insofar as the prosecution of the patent was concerned?

A. Let me answer you this way. At that time the application had just been filed. There would be no sense in inspecting the file wrapper because there would be no action in the case.

Q. Well, the patent wasn't purchased until it was issued, was it? I am not talking about the application.

A. You are talking about back in 1944 now.

The Court: No, he is talking as of the time of the purchase of the patent.

The Witness: I am sorry.

The Court: Which was contained in the contract of 4/18/49. The patent was issued on March 16, 1948.

The Witness: Well, there was no investigation of the file wrapper at either date. I mean we had a license, naturally [408] before we purchased the patent.

The Court: Well specifically did you ask the attorney or Silberman where and in what shop these machines had been made?

The Witness: No. It was presumed they were

(Testimony of Ralph E. Meech.)

made on the premises and by his machine shop. He had his own toolmakers.

The Court: When you say it was presumed, that is what you thought?

The Witness: Yes, sir.

The Court: Was this place where you saw the machines operating a machine shop? Did it have lathes, drills and so forth?

The Witness: Yes. In all zipper plants you will find that they have usually their own machine shop connected with it unless it is what we call an assembler.

They have lathes and milling machines and other equipment for building dies and tools.

The big thing in a zipper machine is the replacement and repair of tools such as punches and dies and they have to be maintained. That is the reason they have their own machine shop.

As to any major part of a machine they will sublet that. If it is a casting they will have it made outside their own premises, but they still have to maintain a machine shop to do a job on their own machines. [409]

The Court: Well, so you thought the machine had been made in the place where you saw it operate?

The Witness: That is correct.

The Court: You didn't inquire as to who the mechanics were who made them?

The Witness: No.

(Testimony of Ralph E. Meech.)

The Court: Or in charge of making them?

The Witness: No. I had no reason to, your Honor, because I took the man's word for it.

No one said or told us anything different at the time.

The Court: Well——

The Witness: Or since then.

The Court: You are a patent lawyer, are you not?

The Witness: That is right.

The Court: When you help negotiate for the purchase of a patent—when you helped to negotiate for the purchase of this patent '793, you knew it had a filing date of September 23, 1944. You must have known that. You had seen the application.

The Witness: Yes.

The Court: Did you make any inquiry as to what date Silberman had actually made his invention and first made a model of it?

The Witness: Not as to his first date.

The Court: You are familiar with this situation that [410] you referred to as I think swearing back, aren't you—the fact that at various times inquiries will arise as to whether or not a certain invention was actually invented on some date prior to the filing date as shown in the application?

The Witness: That is right, but the only time, of course, you need that information is generally at the time of interference proceedings, which doesn't occur very often.

(Testimony of Ralph E. Meech.)

If you know where the information is located and you can put your finger on it—I mean at the time of negotiations really it doesn't mean anything, your Honor.

The Court: I can understand how it would come in in an interference proceeding but there weren't any here, were there?

The Witness: No, sir.

The Court: Now of course your testimony is that you saw these machines in April of 1944 operating?

The Witness: That is correct.

The Court: So therefore you knew, although the file date was September 23, 1944, you knew then that they were in existence in the April preceding?

The Witness: That is correct.

The Court: But did you make any inquiry as to how far back they went before April of 1944?

The Witness: No, I did not. I had no reason for doing that. [411]

The Court: Isn't there another situation that occurs in patent law in which a patent lawyer would ordinarily investigate—for instance, assuming Silberman in '793 had his machine. You saw the model in April of 1944. You knew that. And then the application was filed in September of 1944 but supposing some Joe Doakes popped up who contended that in January of 1944 he had made the same machine. Now, if he could prove that he had made the same machine in January 1944 and used it publicly so the world knew about

(Testimony of Ralph E. Meech.)

it, the Silberman patent would be out the door, wouldn't it?

The Witness: That is correct.

The Court: Did you make any investigation of that kind?

The Witness: That would be impossible to make.

The Court: Well, it would be impossible to investigate Joe Doakes because you don't know about him.

The Witness: That is correct.

The Court: But wouldn't it be entirely possible to investigate what was the starting date of the Silberman patent other than what you saw in April of 1944?

The Witness: Not particularly at that time, your Honor, for the reason all I was interested in at that time was whether or not there were any patents in the prior art which might be infringed by this structure. That would be my main object at that time. [412]

When the patentee made, or Silberman in this case, made the invention would not be important to me at that time as long as he made the invention and there was nothing in the patented art that would prevent us from using it.

The Court: All right, I am through.

Q. (By Mr. Graham): Would you also consider it unimportant, Mr. Meech, at the time that you—that your company bought the patent and paid, I believe, \$75,000 for it, wouldn't you think that such an investigation might be important at

(Testimony of Ralph E. Meech.)

that time? A. Investigation as to what?

Q. What you and the judge have been discussing.

A. No. It still wouldn't make any difference as far as I was concerned because I knew the prior art and there were no patents being infringed.

Here was a machine, the second version of the machine which was a double-header machine, which is Plaintiff's Exhibit No. 5 in the next courtroom. It was the machine which came just prior to the time we negotiated the second agreement. That was the main reason we made the deal with Silberman, because of the second machine. Again there was no infringement as far as we were concerned. He was the inventor and we made a deal with him. There was no reason for us to think otherwise. [413]

Q. Had you at that time ever heard the name of Sigmund Loew?

A. That I can't recall. I met Sigmund Loew in Meadville.

Q. When was that, Mr. Meech?

A. That I can't recall, but it was some time, I would say, around '48, '47. I could check my file and make sure.

Q. You had met him at the time you were negotiating the purchase of the patent? This is 1949 when the patent was purchased.

A. I don't recall. I don't believe I had. I can't recall correctly whether it was before or afterwards.

(Testimony of Ralph E. Meech.)

Q. I believe you stated it was 1948.

The Court: '47 or '48 he said.

Q. (By Mr. Graham): '47 or '48 that you first met Mr. Loew in Meadville.

The Court: Where is Meadville?

Mr. Graham: Pennsylvania, your Honor.

The Witness: Western part of Pennsylvania.

The Court: What happens at Meadville? Who is located there?

The Witness: Talon.

Mr. Graham: That is the plant of the plaintiff, your Honor.

The Witness: It is a town of about 20,000, your Honor. [414]

The Court: All right.

What is your best recollection now, that you met Loew at the time that you negotiated this purchase, or not?

The Witness: I would rather look at my file, I think I have it with me, during the noon hour, to refresh my recollection.

Mr. Graham: Your Honor, do you want the witness to do that now, to refresh his recollection from the file?

The Court: Well, can't we go ahead, and let him do that later and come back to it? Or will that interrupt your cross?

Mr. Graham: I'm afraid it will, your Honor.

Mr. Leonard Lyon: Where is this file?

The Court: Is the file here in the court room?

The Witness: It is downtown, that file. That is

(Testimony of Ralph E. Meech.)

the correspondence file that I have. I didn't think I would have use for it.

Mr. Graham: I will go ahead, your Honor, subject to going back to that same point.

The Court: All right. Do that after lunch.

Q. (By Mr. Graham): Had you at the time Talon purchased the Silberman patent ever heard of the Universal Button Company in Canada?

A. Yes, I had.

Q. Did you know that Mr. Loew had been connected with that company at one time? [415]

A. He was connected with the company at the time I met him, that is in an indirect manner, and was working in Walkersville, Ontario.

Q. Do you recall what the occasion was for your meeting with Mr. Loew?

A. Mr. Loew had made or developed some kind of a die for making zippers, and he met and tried to interest Talon in his invention, that is the reason he came to Meadville.

The Court: Well, do you remember when that was, that he came to Meadville?

The Witness: That was the time that I am going to check.

The Court: That you are in doubt about?

The Witness: Yes.

The Court: This die, did that have anything to do with this Loew patent that later on was received here? Strike that out.

Mr. Leonard Lyon: Exhibit O.

The Court: Exhibit O is a patent that was filed

(Testimony of Ralph E. Meech.)

in August of '44 by Loew. Has this die that you looked at anything to do with Exhibit O?

The Witness: I can't say for sure. At that time Mr. Loew said that he filed an application on it. That is the only thing that I can tell you, because I don't recall what Mr. Loew disclosed to us at that time.

The Court: You have been following the zipper patents; [416] do you know whether there are other patents to Loew, or is this the only one?

The Witness: That is the only patent that I know of.

The Court: Then we might infer that this was the application that he filed?

The Witness: There might be that inference.

The Court: He might have filed applications which were denied and never resulted in patents?

The Witness: That is correct.

The Court: All right. Go ahead.

Mr. Graham: If your Honor please, might I ask you the date of issuance of that Loew patent?

The Court: It was issued July 6, 1948.

Mr. Graham: Thank you.

Q. (By Mr. Graham): Mr. Meech, bearing in mind that the Loew patent was issued on July 6, 1948, does that refresh your recollection as to the time that you met Mr. Loew at Meadville?

A. No, it would have no bearing on it.

Q. I think you stated that he talked to you about an application that he had on file, not about a patent, but about an application?

(Testimony of Ralph E. Meech.)

A. That is correct.

Q. You don't know whether this was the application which ripened into this patent which is in evidence, you don't [417] know whether that was the same application that he was talking about to you? A. No, I don't.

Q. Did he tell you that he had more than one application on file?

A. No. He said he had an application filed, that is all.

Q. When you talked with Mr. Loew, did you have any discussion with him about Mr. Silberman or the Silberman patent?

A. None whatsoever.

Q. Regardless of the date when you met Mr. Loew, which you are going to try to find from your records, at the time the Silberman patent was purchased by Talon, had you ever heard of Mr. Loew?

A. That I can't say until I look at my records.

Q. Did Mr. Silberman ever mention him?

A. No, none whatsoever.

Q. Did Mr. Burkitt ever mention him?

A. No.

Q. Will you refresh your recollection on that point, Mr. Meech, so that we can have some more discussion about it after the lunch recess?

A. Do you mean on the date?

Q. Well, we have now the date on which you met Mr. [418] Loew in Meadville, and now I am asking you if you had ever heard of him.

The Court: , That is one of the things that he is

(Testimony of Ralph E. Meech.)

going to refresh his recollection on, when it was that he met Loew at Meadville. He has said that he thought about '47 or '48, but he doesn't know. That is the occasion when Loew told him about a die and that he filed an application. Now, the other thing that you want him to refresh his recollection on is whether or not he had heard of Loew at the time he negotiated and completed the purchase of the Silberman patent by Talon; is that right?

Mr. Graham: That is right.

The Court: All right.

Q. (By Mr. Graham): Did you at any time ever hear that Mr. Loew had claimed that Mr. Silberman had stolen his invention from him?

A. I did not.

Q. You never heard that at any time?

A. I never heard that at any time.

Q. Right up to the present day?

A. I can't say that I heard that to the present day at any time.

Q. You never heard that Mr. Loew and Mr. Silberman had had heated arguments about their respective inventions? A. No, I did not. [419]

Q. Right up to the present day?

A. That is correct.

Q. I believe, Mr. Meech, you were asked by your own counsel yesterday the reasons why Talon bought the Silberman patent. I believe you answered—I am sorry, I cannot decipher the notes here, but you did have that question asked of you yesterday, is that correct?

(Testimony of Ralph E. Meech.)

A. What specifically are you referring to? I believe so.

The Court: Well, the specific question was asked by Mr. Lyon why—it is in my notes here somewhere.

Mr. Charles Lyon: Page 318 of the record, your Honor.

The Court: Why did Talon buy the Silberman patent.

The Witness: Yes.

Q. (By Mr. Graham): Do you recall what your answer was, Mr. Meech, at that time?

A. I believe so.

Mr. Graham: If your Honor please, I would like to know what that answer is, if I may, from the transcript.

Mr. Charles Lyon: 318 of the transcript beginning at line—the question is on line 13 and the answer begins on line 17.

The Court: We will take a minute to read it over. 118?

Mr. Charles Lyon: 318.

The Court: Go ahead. [420]

Q. (By Mr. Graham): Would it be correct to say, Mr. Meech, that a fair summary of your answer to that question was that the Silberman machine would make slide fasteners cheaper than any machines that had been brought to your attention up to that date? A. That is correct.

Q. And that you had spent large sums of money

(Testimony of Ralph E. Meech.)

in trying to develop a machine that would make the zippers cheaper? A. That is right.

Q. When you purchased that machine you made very little investigation about the Silberman patent?

A. I wouldn't say we made very little investigation. We knew the prior art, and we knew that there was no infringement of other patents, and that was all that we were interested in. We certainly were not going to run around the country to see if there were other inventors.

The Court: Let me interrupt.

Is 500 revolutions a minute an appreciable amount?

The Witness: Do you mean increase?

The Court: The difference of 500 revolutions a minute, is that an appreciable amount up or down?

The Witness: Yes, it is, your Honor. It is 20 per cent, which means quite a lot.

The Court: Well, in your testimony the other day, beginning at 318, one of your reasons given—page 320, line 1, [421] “The first machine did not go as fast as the present machine. I believe that machine was around 1500 RPM's. We weren't too much interested at that time.”

A few minutes ago you told me that the speed of the Silberman machine in April of '44 was 2,000 r.p.m. Now, which is right?

The Witness: It is hard to clock a machine. A machine can go 2,000 r.p.m., your Honor, and not produce a satisfactory fastener, but it will produce

(Testimony of Ralph E. Meech.)

a satisfactory fastener going at about three or four hundred r.p.m. less than what it was designed for.

The same as the second Silberman machine. The theoretical speed of that machine was 3600, but that machine could never operate successfully and commercially put out a good product at all times at a speed of more than 2500 to 2750 r.p.m.

The Court: What is your best recollection now as to what was the operating speed of the Silberman machine in April of '44 when you saw the machines operate?

The Witness: The operating speed was someplace between 1500 and 2,000 r.p.m., depending—the speed is variable, as you can readily see, but at the time I saw it it was in that range.

Later, of course—the machine that we have in court here is the second version, is not the machine, I think you understand, that I am referring to. [422]

The Court: I understand.

The Witness: That is why we finally decided to make a deal with Mr. Silberman, because of the double head type machine and its relatively high speed.

The Court: All right. Go ahead.

Q. (By Mr. Graham): Mr. Meech, at the time in 1949 when Talon purchased the Silberman patent, do you know whether any firms other than Silberman's own firm were using the Silberman machines or the Silberman method?

A. Yes, that was brought to our attention, and

(Testimony of Ralph E. Meech.)

of course we wanted to know about these other uses, because we wouldn't make a deal with him unless they were spelled out, which he did spell them out.

Q. Do you recall how many companies were using them?

A. I think they are referred to in Exhibit A and B of our agreement, are they not?

Q. I believe they are. There were quite a few of them. A. I wouldn't say quite a few.

Q. Well, half a dozen?

A. Half a dozen, I suppose.

Q. And there was at least one firm on the West Coast, and one firm—more than one firm on the East Coast? I am referring to California Slide Fastener.

A. Well, out here at that time I believe it was California [423] or Cap-Tin. I don't recall whether it was Cap-Tin first, and then they changed their name. Whether it was two or three, and then there was Union, I believe.

Q. Mr. Meech, isn't it a fact that the real reason for purchase by Talon of the Silberman patent was that almost any small organization could build a zipper machine, zipper manufacturing machine, in accordance with the Silberman method, and cut in on the business of Talon and other slide fastener manufacturers? A. It was not.

The Court: Did you use the word "Silberman" advisedly, or did you mean Poux?

Mr. Graham: I meant Silberman, your Honor.

(Testimony of Ralph E. Meech.)

The Court: Go ahead. Answer the question. Or have you finished?

The Witness: Yes, I have.

Q. (By Mr. Graham): Before you bought the Silberman patent, Poux '017 had already been purchased by Talon, isn't that correct? I mean it was not developed within the Talon organization?

A. That was developed by Mr. Poux when he was away from Talon for a few years, but we bought that patent from him when he came back with the organization. It was in application form in 1936.

Q. But it was developed by Poux when he was not [424] employed by Talon?

A. I would say yes. I don't know when he started to develop it, whether it was before he went out on his own, or afterward.

The Court: The Poux patent '017 names him as assignor by mesne conveyances to Hookless Fastener Company, Meadville. Is that one of Talon's companies?

The Witness: The Hookless Fastener Company is a predecessor of Talon. It was Hookless Fastener Company from 1913 to 1937, at which time the corporate name was changed to Talon, Inc.

Mr. Graham: Excuse me just a moment, your Honor. I want to get a date.

If your Honor please, there are a series of letters that I believe we settled on the pretrial could be admitted in evidence, although some of them are copies rather than originals. May I show them to

(Testimony of Ralph E. Meech.)
counsel for the plaintiff to make sure that that is so?

The Court: Yes.

Mr. Charles Lyon: May I have that statement? I was conferring with counsel.

(Statement read by the reporter.)

Mr. Charles Lyon: Are those the same letters that are exhibits to the Sigmund Loew deposition, being correspondence between Evans and McCoy and Union Slide Fastener? [425]

Mr. Graham: That is correct.

Mr. Charles Lyon: I think we have stipulated that into evidence already. I am perfectly willing that it should be received.

The Court: All right. We will mark them as defendant's exhibit next in order. It will be what?

The Clerk: Defendant's Exhibit P.

The Court: Let the series be called Exhibit P, received in evidence.

(The exhibit referred to was received in evidence and marked as Defendant's Exhibit P.)

Mr. Charles Lyon: Exhibit P will constitute the letters which are attached to the Sigmund Loew deposition.

The Court: I don't know.

The Clerk: I thought counsel was going to hand them up to me.

Mr. Graham: I have copies here which I will be glad to hand up. Do you want to compare them, Mr. Lyon?

(Testimony of Ralph E. Meech.)

Mr. Charles Lyon: Shall we give them numbers P-1 and P-2 and so forth?

The Court: All right. Do you have them in chronological order?

Mr. Graham: I believe so.

Mr. Charles Lyon: The first one is a letter dated May 17, 1947 from Evans & McCoy to Union Slide Fastener Company.

The Court: That will be Exhibit P-1.

Mr. Charles Lyon: In the Sigmund Loew deposition there is a——

The Court: You say the record is inconclusive. It will be a question of fact then.

Mr. Charles Lyon: I might state this on the Loew deposition. A document was introduced, of which I have a photostatic copy, and Mr. Loew would not testify whether he did or did not send the letter. He probably did not.

We just left it at that so I don't know whether it should go in or whether it should not go in. But if it does [427] go in it should be noted that no one has testified it was ever sent. It doesn't make much difference one way or the other.

The Court: What do you want to do? Do you want to admit it?

Mr. Leonard Lyon: May it be Exhibit P-2?

The Court: That is the letter you are talking about?

Mr. Charles Lyon: That is correct.

The Court: Is there any objection to it?

Mr. Charles Lyon: No, your Honor.

(Testimony of Ralph E. Meech.)

The Court: Very well, Exhibit P-1 and P-2 will be received in evidence.

(The documents referred to, marked Defendant's Exhibits P-1 and P-2, were received in evidence.)

Mr. Charles Lyon: The next I have in chronological order is a letter from Evans & McCoy dated September 15, 1947 to Sigmund Loew, president of Union Slide Fastener, P-3.

The Court: P-3 in evidence.

(The document referred to, marked Defendant's Exhibit P-3, was received in evidence.)

Mr. Charles Lyon: The next I have in chronological order is Evans & McCoy, a letter to Evans & McCoy from Union Slide Fastener dated September 23, 1947, P-4.

The Court: P-4 in evidence. [428]

(The document referred to, marked Defendant's Exhibit P-4, was received in evidence.)

Mr. Charles Lyon: The next one I have is a letter of September 26, 1947, Evans & McCoy to Philip Lipson, Union Slide Fastener, Inc. P-5.

The Court: P-5 in evidence.

(The document referred to, marked Defendant's Exhibit P-5, was received in evidence.)

Mr. Charles Lyon: The next in order is dated November 12, 1947. It is on the letterhead of Evans & McCoy to Union Slide Fastener Company. Exhibit P-6.

The Court: P-6 in evidence.

(The document referred to, marked Defendant's Exhibit P-6, was received in evidence.)

(Testimony of Ralph E. Meech.)

Mr. Charles Lyon: The next in chronological order is a letter dated November 20, 1947 to Evans & McCoy from Union Slide Fastener Company by Philip Lipson, secretary.

The Court: P-7 in evidence.

(The document referred to, marked Defendant's Exhibit P-7, was received in evidence.)

Mr. Charles Lyon: The next chronologically is a letter dated June 22, 1948 to Mr. G. S. McKee, vice-president Talon, Inc., signed Union Slide Fastener by Sigmund Loew, president.

Mr. Graham: I am sorry, your Honor, but I don't have that. [429]

Mr. Charles Lyon: Then we will withdraw that.

The Court: Was it identified in the deposition?

Mr. Charles Lyon: It was, your Honor.

Mr. Graham: Yes, it was.

Mr. Charles Lyon: It doesn't have anything to do with this case. He is just asking to borrow some tape.

The Court: Let us forget about it then. Wait a minute. Did we mark Exhibit P-8, the letter of June 22nd you were just talking about?

The Clerk: That is the one we don't need.

The Court: That is the one we don't need.

Mr. Charles Lyon: And the next one I have—I have another one. Do you have another one?

Mr. Graham: If your Honor please, the letter that Mr. Lyon doesn't consider important I do and I would like to have it identified.

The Court: All right, that will be Exhibit P-8.

(Testimony of Ralph E. Meech.)

(The document referred to was marked Defendant's Exhibit P-8 for identification.)

Mr. Charles Lyon: A letter of June 21st, 1948 to Mr. McKee from Sigmund Loew will then be Exhibit P-8.

The Clerk: Do you have a copy of that?

Mr. Charles Lyon: You have a copy of it. I might add just so that the record will be clear, that what we have here is P-1, P-2 and P-3 and right on down the alphabet to [430] the deposition of Mr. Sigmund Loew.

The Court: What are you going to do with the deposition?

Mr. Charles Lyon: It is your deposition.

Mr. Graham: I am going to file it or offer it in evidence and ask it be considered filed.

The Court: Let us by reference mark it and it will be flagged so that it can be left right in the original deposition. We will mark that P-8.

The Clerk: What did you say the deposition number was?

Mr. Charles Lyon: H.

The Court: P-8 is in evidence.

(The document referred to, marked Defendant's Exhibit P-8, was received in evidence.)

The Clerk: Shall I open the deposition?

The Court: Yes, open the deposition.

Mr. Charles Lyon: Mr. Graham has pointed out to me that he has two more letters in this case. They are chronologically out of order in the Loew deposition.

(Testimony of Ralph E. Meech.)

The first one in the Loew deposition is a letter on the letterhead of Talon, Incorporated, dated June 25, 1948 from Mr. McKee to Sigmund Loew and the last one being a letter——

The Court: That will be P-9. Do you have a copy there?

Mr. Graham: What date was that?

Mr. Charles Lyon: June 25, 1948.

Mr. Graham: I do not, your Honor. [431]

Mr. Charles Lyon: That will be P-9?

The Court: What is the letter number in the Loew deposition?

Mr. Charles Lyon: It is Exhibit I.

The Court: Exhibit I by reference, leaving it in the Loew deposition which will become Exhibit P-9.

The Clerk: They have them marked 1—and then a letter after them. They are all marked with the figure 1.

Mr. Charles Lyon: They are all 1-A, -B, -C, -D and so forth.

The Court: Is there one more letter in this series?

Mr. Charles Lyon: Yes. January 20, 1948 on the letterhead of Evans & McCoy and is addressed to the Union Slide Fastener Company. It is signed by William C. McCoy. That is Exhibit J or J-1.

Mr. Graham: I have a copy of that.

The Court: That will be P-10.

(The document referred to, marked Defendant's Exhibit P-10, was received in evidence.)

(Testimony of Ralph E. Meech.)

The Clerk: Was P-9 Exhibit I to the deposition?

Mr. Charles Lyon: Yes.

The Court: The one counsel has now is P-10 in evidence.

The Clerk: Yes.

The Court: The series P-1 to P-10, inclusive, are all in evidence. [432]

The Clerk: Counsel is offering a copy of P-10.

The Court: That is what I said. We will use his copy and put it in by reference.

Can we stipulate who these parties are? Evans & McCoy are patent lawyers for whom?

Mr. Charles Lyon: Evans & McCoy are attorneys of record in this case.

Mr. McCoy: We are attorneys for the plaintiff, your Honor.

The Court: And do I gather from this that Sigmund Loew at one time was an officer of the defendant Union Slide Fastener Company?

Mr. Charles Lyon: He was president.

Mr. Graham: That is right, your Honor, he was president.

The Court: Is he still an officer?

Mr. Graham: No, he is not.

Mr. Leonard Lyon: With reference to the deposition of Mr. Loew. He gave his address as North Hollywood. I assume that he is not available or counsel wouldn't be offering his deposition.

Mr. Graham: That is correct, your Honor. Mr. Loew is in Israel.

(Testimony of Ralph E. Meech.)

The Court: Well, are you offering the deposition now or later or when?

Mr. Graham: I will be glad to offer it now, your Honor. [433]

The Court: There is no objection to the deposition on the basis of counsel's oral representations as to where Mr. Loew is?

Mr. Leonard Lyon: None, your Honor.

The Court: All right. The Loew deposition will become Exhibit Q in evidence.

(The document referred to, marked Defendant's Exhibit Q, was received in evidence.)

The Clerk: I was wondering, your Honor, if there are other exhibits here that are attached to the deposition that have not been offered. That might be a problem.

The Court: Are there other exhibits attached to the deposition?

Mr. Charles Lyon: No, your Honor, there are not. The letters which have been offered were the only exhibits to the deposition of Sigmund Loew.

The Court: Give me a minute or two to look over some of these letters. All right.

Q. (By Mr. Graham): Mr. Meech, you are familiar with the fact that a charge of infringement on the part of the defendant in this action was made on behalf of Talon for the first time in 1947, are you not?

A. If that is what the letters or records show, yes. I have no means of telling.

Q. The letter, Exhibit P-1 does show that a let-

(Testimony of Ralph E. Meech.)

ter was [434] written on May 17 to Union Slide Fastener Company stating that Union Slide Fastener Company was using certain machines that might employ inventions under certain Talon patents?

A. I don't know. I don't have the letter. I can't tell you.

(Document handed to the witness.)

The Witness: Yes, that letter was written by Mr. McCoy on behalf of Talon.

The Court: Is it contended that that is a notice of infringement?

Mr. Graham: Not on our part, your Honor.

The Court: Is that the date you rely upon for notice of infringement, Mr. Lyon?

Mr. Charles Lyon: On the Poux patent, yes, your Honor.

The Sigmund Loew deposition will show, which has been offered in evidence, will show that Mr. Loew testified that in 1948 Mr. Silberman, who was then the owner of the Silberman patent, orally charged him with infringement of the Silberman patent and that is the date we rely upon for notice of the Silberman patent.

The Court: Then you rely upon this date for the Poux patent?

Mr. Charles Lyon: Yes. And I believe your Honor in 1947—1947 was the year that Union Slide Fastener Corporation was organized so it couldn't go very much back of that. [435]

The Court: Do you contend that that is a good

(Testimony of Ralph E. Meech.)

notice of infringement when you write a letter and say "You might be infringing?"

Mr. Charles Lyon: Mr. McCoy wrote the letter. I will let him answer that.

The Court: How about that, Mr. McCoy?

Mr. McCoy: The patent was called to the defendant's attention at that time and I would contend that that was a notice of infringement.

We were not permitted an inspection of the machines immediately. We were dealing with hearsay as to what character and kind of machine was used. It was the best information available at the time.

The Court: The point being at least you put them on notice of your claim?

Mr. McCoy: Yes, your Honor.

The Court: That at their peril they should determine whether or not they were infringing?

Mr. McCoy: Yes.

The Court: What is the date plaintiff relies upon with reference to the '093 patent?

Mr. Charles Lyon: The court means the '793 patent?

The Court: Yes.

Mr. Charles Lyon: I just gave my copy of the deposition away but in the deposition there was a meeting at the [436] Hollywood Roosevelt Hotel, that much will be made of later on this case, I believe, and during the deposition Mr. Loew testified that at that meeting Silberman told him he was going to sue him.

(Testimony of Ralph E. Meech.)

The Court: All right.

Mr. Charles Lyon: If you will look at pages 9 and 10, the last line of page 9 and the first line of page 10 of the Sigmund Loew deposition he said——

The Court: Just a minute. You said Sigmund's deposition.

Mr. Charles Lyon: I meant Sigmund Loew's deposition. And on those pages he is talking about a charge of infringement of the Silberman patent.

Now, the date of that meeting was sometime in the summer of 1948. I think that is about as close as we can date it.

The Court: All right.

Mr. Leonard Lyon: It is interesting to note they had quite an argument, your Honor and the answer on page 7 of Mr. Loew's deposition. Mr. Loew was asked:

"And you denied that you are infringing his machine?"

"A. Well, yes and no. I mean there are certain similarities and there are certain things that we in making these machines had adopted of his machine."

The Court: Let us go ahead. [437]

Mr. Graham: If your Honor please, I don't have the immediate reference but I believe either in the pretrial stipulation or in answer to an interrogatory the plaintiff has relied upon the date of the filing of the complaint as the date of notice of infringement under the Silberman patent.

(Testimony of Ralph E. Meech.)

Mr. Charles Lyon: That is the date of notice from the Talon Company but I think we are, as a matter of law, entitled to rely upon the notice from our predecessors in interest.

Actually the legal thing that matters is knowledge of the matter and not actually notice of a claim. And certainly knowledge of the patent was brought about by that notice.

The Court: We will go into that later. You may proceed.

Q. (By Mr. Graham): Mr. Meech, you are also familiar with the fact that there was subsequent correspondence between Union Slide Fastener and Evans & McCoy? A. Yes, sir.

Q. Calling your attention to Exhibit P-2, a letter dated September 15, 1947. That letter is addressed to Sigmund Loew, president of the Union Slide Fastener. Does that refresh your recollection as to whether or not you ever heard of Sigmund Loew before Talon purchased the Silberman patent?

A. It appears from this letter that I had met, possibly met or heard of Sigmund Loew before that time.

In this letter they speak of a visitation by representatives [438] of Talon. At that time we were negotiating with Union or, rather Universal Button Company.

They had requested—not exactly requested but they were inquiring, let us put it that way, about our patents and whether or not we would give Universal a license under those patents.

(Testimony of Ralph E. Meech.)

At that time our representatives were invited to go over to Walkersville, Ontario, to their plant over there, which is, of course, across the river, which they did.

At that time they inspected the button-making plant of the Universal Button.

Whether or not Loew was present or whether they met him at that time or whether this was a later visit I do not recall. It seems to me they were spaced about a year apart.

At that time Universal and Mr. Loew were not on very good terms either. But we did get, it seems—it seems that Mr. Loew had some rights that he could peddle or sell and other rights belonging to Universal but we were negotiating with Universal as a company.

Q. (By Mr. Graham): Do you recall whether Union Slide Fastener ultimately agreed to permit a representative of Talon to visit and inspect its plant here in California? A. Yes, they did.

Q. And do you remember who represented Talon on that occasion? [439]

A. Our Mr. Grosvenor S. McKee.

Q. And his visit to the Union Slide plant was sometime in the first few months of 1948; it would not appear from these letters.

A. I don't recall, but you have, I think, the information.

Q. That is in the interrogatories?

A. You have whatever evidence there is of that kind. [440]

(Testimony of Ralph E. Meech.)

Q. When Mr. McKee returned to Talon, did he make a report of his investigation?

A. Yes, he did.

Q. That report is attached as an exhibit to the interrogatories. Did Mr. McKee and you have any discussion about the Union situation?

Mr. Charles Lyon: Just a minute, Mr. Graham. So that the record may be clear, you are quite correct that that report that Mr. McKee made is attached to the interrogatories. It is Exhibit 3 to the answer to the interrogatories. Mr. Loew's testimony with respect to that, when called to his attention at his deposition, was that it was a better report of the things that took place on Mr. McKee's visit to the Talon plant than he could have made himself immediately thereafter. And I at this time offer Exhibit 3 to the interrogatories as plaintiff's exhibit next in order.

The Clerk: Is that plaintiff's answers to the defendant's interrogatories?

Mr. Charles Lyon: That is right.

The Clerk: Page 69 is that?

Mr. Charles Lyon: Page 69 is correct. I think it is two pages long, though.

The Clerk: Yes, two pages. The page is numbered 69 but page 69 consists of two sheets of paper.

The Court: All right. That will be exhibit for the [441] plaintiff next in order. What will be the number?

The Clerk: That will be Exhibit 14.

(Testimony of Ralph E. Meech.)

The Court: Received in evidence.

(The document referred to was received in evidence and marked as Plaintiff's Exhibit No. 14.)

Mr. Charles Lyon: Is there a question pending?

Mr. Graham: I believe so.

The Court: Read it.

(The question referred to was read by the reporter, as follows: "Q. That report is attached as an exhibit to the interrogatories. Did Mr. McKee and you have any discussion about the Union situation?")

The Court: Upon his return.

The Witness: Merely in a general way.

Q. (By Mr. Graham): Did that discussion cover subjects other than the subject covered in the report, his written report?

A. It is substantially what was said in the report.

Q. Did he tell you that it was his opinion that Union's machines were infringements of any of the Talon patents?

A. Mr. McKee had no mechanical knowledge, he is not an engineer, and could not tell whether the defendant's machine infringed, or Union's.

The Court: Now, that is your explanation, which should come after you answered the question.

You are a lawyer, now, and of course we know that lawyers make the poorest witnesses in the world, having been one myself.

The Witness: I know what you mean.

(Testimony of Ralph E. Meech.)

The Court: The question is, did he tell you that Union's machines infringed?

The Witness: No.

The Court: Then your explanation that you gave follows.

All right. Go ahead.

Q. (By Mr. Graham): You mean to state, then, Mr. Meech, that Talon thought that Union Slide Fastener was infringing some of Talon's patents, and when they were invited to send a representative, they sent a man who knew nothing about machinery and couldn't tell whether they were infringing or not; is that your answer?

A. Yes, I will qualify that. We did not send him for that particular purpose. Mr. McKee happened to be in California on other business, and it was suggested that Mr. McKee observe Mr. Lipson's machine at that time.

Q. At the time of Mr. McKee's visit in 1948, Talon had not yet purchased the Silberman patent, is that correct?

A. I believe the record shows that, does it not?

Q. Well, the patent was purchased in 1949.

A. If Mr. McKee's visit was in '48, you are correct.

Q. Talon at that time did not own the Silberman patent?

A. That is correct.

Q. Now, after Mr. McKee's visit, and after the purchase by Talon of the Silberman patent, did Talon request permission of Union Slide Fastener

(Testimony of Ralph E. Meech.)

to send a representative to inspect their plant again? A. That I don't recall.

Q. Well, did any representative ever go, to your knowledge, after the McKee visit?

A. Yes, they did.

Mr. Charles Lyon: Are you referring to prior to the lawsuit or afterwards?

Mr. Graham: I am speaking about prior to the lawsuit, before this suit was brought.

The Witness: Not to my knowledge before the lawsuit was brought.

The Court: Well, it is 12 o'clock.

How much more cross examination do you have, Mr. Graham?

Mr. Graham: I would say at least another hour and a half.

The Court: Will it speed up and assist you any if we take the full two-hours recess this noon instead of an hour and a half? We have been cutting ourselves down on our lunch hour and coming back at 1:30. Do you want to come back at [444] 2:00 instead?

Mr. Graham: I think that would be fine, your Honor. I appreciate that.

The Court: Will it help?

Mr. Graham: It will help, I think.

The Court: 2:00 o'clock.

Mr. Graham: Thank you.

(Thereupon, at 12:00 o'clock noon, a recess was taken to 2:00 o'clock p.m.) [445]

Friday, March 4, 1955, 2:00 P.M.

The Court: Call the case.

The Clerk: No. 10450, Talon vs. Union Slide.
Further trial.

Mr. Charles Lyon: If the court please, I understand it is agreeable with Mr. Mockabee to stipulate to a correction in yesterday's record on page 324, in line 25, to change "1945" to "1944." May that be done by interlineation?

The Court: Let me find it. I have lost my volume. Page what?

Mr. Charles Lyon: Page 324, the last line, the last figure should be 1944 instead of '45.

The Court: All right. The change will be made.

Mr. Charles Lyon: I have been asked to make a statement. I don't know that it is very material to the record, but there is an inventor in this art by the name of Wintritz, W-i-n-t-r-i-t-z, and a patent to him has been offered in evidence. There are other patents under the name of Wintriss, W-i-n-t-r-i-s-s. That is the same patentee, and he changed his name. [446]

RALPH E. MEECH

the witness on the stand at the time of recess, having been heretofore duly sworn, was examined and testified further as follows:

Cross Examination—(Resumed)

Q. (By Mr. Graham): Mr. Meech, have you had an opportunity to refresh your recollection on the date on which you met Mr. Sigmund Loew in Meadville, Pennsylvania?

(Testimony of Ralph E. Meech.)

A. Yes. It appears that I met him some time at least by 1946.

Q. By 1946? A. That's right.

Q. And you think that meeting took place at Meadville? A. I know that it did.

Q. I believe you stated that the occasion for the meeting and the subject discussed was a patent application that he had that he thought that Talon might be interested in.

A. Yes; and also a visit to our plant.

Q. On the occasion of that visit there was no discussion between you and Mr. Loew concerning Silberman or the Silberman patent application?

A. There was not.

Mr. Meech, can you give an estimate, rough estimate, of what part of the production of zipper chain by Talon is [447] represented by production from the machines constructed under the Silberman patent?

A. That question was asked yesterday, and, as I stated at that time, it was difficult to base it upon an exact percentage. It would be difficult for me to—the figure I would quote would be a guess.

Q. Is it the major portion of production?

A. No. As I stated on the record yesterday, it is not the major portion of our production.

Q. So the production of the different methods is the major portion of Talon's production?

A. That is correct.

Mr. Graham: If your Honor please, I want to make reference to a number of exhibits to interrog-

(Testimony of Ralph E. Meech.)

atories propounded by the defendant and answered by the plaintiff. I think probably the witness should have a copy of that document so that we will not waste any time.

The Court: You are referring to the plaintiff's answers filed under date of May 8, 1952? [448]

Mr. Graham: That is correct.

Q. (By Mr. Graham): Mr. Meech, I will call your attention to Exhibit 2, to the plaintiff's answers to defendant's interrogatories, which appear on page 68.

That document purports to be a release or an assignment dated August 22nd, 1949, and is signed by one John T. Havekost.

The Court: Are you going to offer it in evidence?

Mr. Graham: Yes, your Honor.

The Court: It will be Exhibit R in evidence.

Mr. Charles Lyon: Will your Honor please withhold receipt of that in evidence while Mr. McCoy and I confer as to whether we are going to object to it?

The Court: You may confer briefly. It will still be marked for identification.

Mr. Charles Lyon: No objection.

The Court: Received in evidence as Defendant's Exhibit R.

(The document referred to, marked Defendant's Exhibit R, was received in evidence.)

The Court: Let me read it before you start questioning the witness with reference to it.

(Testimony of Ralph E. Meech.)

All right, you may proceed.

Mr. Graham: Mr. Meech, do you recall having received a copy of this document from Mr. Silberman sometime after the date of its execution, August 22nd, 1949?

A. I don't recall where the copy came from but I know [449] a copy came to me. Whether it was from Mr. Silberman or some other place I don't know.

Q. Prior to August 22nd, 1949, had you ever heard of Mr. Havekost? A. Pardon me?

Q. Had you heard of Mr. Havekost?

A. No, I had not.

Q. Did you have any discussion with Mr. Silberman concerning a claim made by Havekost?

A. I did not.

Q. Did you know Mr. Max Lange at that time?

A. Mr. Max Lange?

Q. Yes.

A. You mean Max Lange, president of Slide-lock Corporation?

Q. That is the gentleman I am referring to.

A. Yes, I knew Max Lange.

Q. Did you know that Mr. Havekost had been employed by Mr. Lange?

A. I did know it but not—as to what time I knew it I can't recall.

Q. You don't know whether it was prior to the execution of this instrument?

A. I know it wasn't prior to the execution of this agreement. It was sometime afterward that

(Testimony of Ralph E. Meech.)

I knew of Havekost. [450] And I didn't—I never met the gentleman until the day we were supposed to have taken depositions in Jamaica.

Q. So until this document arrived at the office of Talon, sometime after August 22nd, 1949, you never had any knowledge of a claim made by Havekost?

A. I knew nothing about any prior claims.

Q. None whatsoever? A. That is correct.

The Court: Are you passing this now and going to something else?

Mr. Graham: I was just going to ask one more question—there is no point in asking the question because he says he knows nothing about it. I will pass on.

The Court: I don't understand some of the language here midway in the agreement:

“It being expressly covenanted and agreed that the payment of any consideration hereunder or the acceptance of this assignment by Silberman,” that part I understand. It is the payment by Silberman or acceptance by Silberman and then “shall never operate to raise any presumption or estoppel as to any claim or right on the part of Havekost.”

What does that mean? [451]

Mr. Graham: Well, I believe that it was intended to mean, your Honor, that Havekost gave up any claims or any right that he had to make a claim in the future, in consideration of the payment to him of \$1500.

(Testimony of Ralph E. Meech.)

The Court: "never operate to raise any presumption or estoppel as to any claim of right on the part of Havekost." It would seem to me if they are going to use Havekost's name there, this would be an estoppel against Havekost as to any claim of right. And it seems to me if they used the word "Silberman" there, it would make sense. "never operate to raise any presumption or estoppel as to any claim of right on the part of Silberman."

Mr. Mockabee: Your Honor, my personal interpretation is that, that Silberman by purchasing what he did, whatever it was, by the instrument, was not creating as against himself any prejudice or estoppel.

The Court: "shall never operate to raise any presumption or estoppel." Let's take "presumption." Never raise any presumption as to any claim of right on the part of Havekost.

Mr. Charles Lyon: If your Honor please, we are of course strangers to this document, but it has been our interpretation that that language is in there to negative any recognition that might be implied by accepting an assignment that the fellow had anything to assign. In other words, sure [452] we pay—Silberman pays Havekost \$1500 to withdraw any claim he had that he had something; but by paying him the \$1500 it is expressly understood that we are not recognizing that he had anything.

That is what that language means.

The Court: I get your views of what it means.

(Testimony of Ralph E. Meech.)

But what you think it means and what it says may be two different things.

Mr. Graham: I may say, your Honor, that I made every effort to find out who prepared the instrument, and I was never able to find out.

Plaintiff says he knows nothing about it. Mr. Havekost himself on his deposition stated that he couldn't remember the name of the lawyer.

Mr. Leonard Lyon: I think the matter will be put at rest when your Honor considers the Havekost deposition, and the evidence we will offer, which shows that Havekost never claimed to be the inventor of the Silberman machine.

The Court: Mr. Mockabee.

Mr. Mockabee: In direct response to that, we have a little different interpretation of the Havekost deposition. But I think that it should also be made clear that this instrument is not a statement by Havekost that he was not the inventor of the Silberman machine; it is an assignment of rights. One can possess patent rights in an invention without [453] being an inventor, or he can be an inventor. It does not mean that Havekost is stating that he did not invent the Silberman machine.

Mr. Leonard Lyon: If your Honor please, the evidence will show that Havekost did make some inventions on a machine, but it was a different machine from the Silberman machine. I think it is clear from his deposition and it will be clear from the patent attorney who drew up the patent.

(Testimony of Ralph E. Meech.)

The Court: All right. We will hear the evidence when we get to it. But I am just looking at these words. Here is a document signed only by Havekost, that the payment of any consideration hereunder or the acceptance of this assignment by Silberman—that is what Havekost is saying—shall never operate to raise any presumption as to any claim of right on the part of Havekost. Shall never operate to raise any presumption as to any right on the part of Havekost.

I can make some sense out of the presumption. But now it says “or estoppel.” “Shall never operate to raise any estoppel as to any claim of right on the part of Havekost.”

It looks to me like the word “estoppel” almost knocks out any merit in the word “presumption.”

If it read only “presumption,” “shall never operate to raise any presumption as to any right on the part of Havekost,” Havekost assigning that, that means that because he got the money from Silberman, or because Silberman took the assignment, [454] this shall never raise any presumption that Havekost has any right, obviously referring to this patent '793. But then the other part of it says the same course of conduct shall never operate to raise any estoppel as to any claim of right on the part of Havekost. Namely, that Havekost shall never be estopped to make his claim of right.

It looks to me like you have a document that says, as far as the presumption part, one thing, and as far as the estoppel thing another.

(Testimony of Ralph E. Meech.)

However, if it is an ambiguity, maybe it can be cleared up. Let's go ahead.

Q. (By Mr. Graham): Mr. Meech, you recall, do you not, that Talon brought a number of patent infringement suits against various companies since 1937?

A. Yes.

Q. You do?

A. Yes.

Q. Do you recall that one of the suits was brought against the Conmar Products Corporation, and in that suit the Poux patent '017 was one of the patents in suit?

Mr. Leonard Lyon: If this is material, it is material to the defendant's case. I don't want to be captious, but we are cross examining the witness on part of plaintiff's case in chief.

If it can be understood that any matters beyond that [455] cross examination are part of the defendant's case in chief, I don't want to require the witness to be called twice. But I don't want this to be considered part of the plaintiff's case in chief.

The Court: Well, I don't think this can be proper cross examination as to the case in chief, because I recall no direct questions of this witness as to these patent suits that were brought. However, Mr. Lyon has indicated that he will permit you to proceed with the understanding that this now is part of your case.

Mr. Mockabee: Your Honor, there is a bearing. The patent suits themselves bear directly upon the grant of a number of the licenses. The witness was questioned as to the grant of licenses.

(Testimony of Ralph E. Meech.)

The Court: The witness was questioned about licenses that had been given or exchanged with various parties, cross licenses and whatnot. To the extent that any of these matters that you are eliciting refer to how it happens that licenses or cross licenses were issued, then it will be, probably, part of cross examination. Is that satisfactory, Mr. Lyon?

Mr. Leonard Lyon: That is quite all right.

Mr. Graham: I don't recall that the question was answered.

(The last question was read by the reporter, as follows: [456] "Q. Do you recall that one of the suits was brought against the Conmar Products Corporation, and in that suit the Poux patent '017 was one of the patents in suit?")

The Witness: From the record it appears that suit was brought against Conmar, but as far as my own knowledge is concerned, I do not know, because I was not with the company at that time.

The Court: What record are you referring to?

The Witness: Pardon?

The Court: You say from the record. What record are you referring to?

The Witness: From the records in my office when I assumed the duties of patent counsel.

Q. (By Mr. Graham): What year was it that you were employed by the Hookless Fastener Company, predecessor of Talon?

A. From 1930 until 1937.

(Testimony of Ralph E. Meech.)

Q. And then you were re-employed at a later date? A. 1944 until—until. [457]

Q. Now, it appears from the record, Exhibit 4, to plaintiff's answers to defendant's interrogatories, filed May 8, 1952, that the suit against Conmar was filed on October 18, 1937.

You were not with Talon at that time?

A. I left in July of that year.

Q. July 1937? A. That is right.

The Court: This Exhibit 4, consisting of pages 70, 71 and 72 apparently is some summary of court actions brought in District Courts throughout the United States. Is that going to be an exhibit?

Mr. Graham: Yes, your Honor, I offer it as such.

The Court: Any objection to it?

Mr. Charles Lyon: None.

Mr. Leonard Lyon: No, your Honor.

The Court: Exhibit S for the defendant and it will be received in evidence.

(The document referred to, marked Defendant's Exhibit S, was received in evidence.)

Q. (By Mr. Graham): Do you recall, Mr. Meech, that suit was brought by Talon against Max Lange and Slidelock Corporation in 1947?

A. I do.

Q. And Poux patent '017 was one of the patents in [458] suit? A. That is correct.

Q. Do you recall how that suit was terminated?

A. That was terminated by agreement between the parties June 12, 1947.

(Testimony of Ralph E. Meech.)

Q. Was that agreement made or negotiated before the trial of the action or during the trial or after the trial?

A. It was negotiated before the trial.

Q. So that there was no trial?

A. That is correct.

Q. Of that action? A. That is right.

Q. Do you recall that in the same year and in the same court Talon brought suit——

The Court: Before you go into that, did that result in a licensing agreement?

The Witness: That is right.

The Court: Cross license?

The Witness: I believe it was a cross license arrangement where we did obtain some license or licenses under some of his applications.

The Court: All right.

The Witness: Will that agreement be in evidence?

Mr. Graham: I believe a copy is attached here. I will offer it in evidence. [459]

The Court: Well, is this the place to offer it?

Mr. Graham: No, your Honor. I was going to get to that at a later point.

The Court: All right, go ahead.

Q. (By Mr. Graham): Do you recall that in the same year, in the same court, suit was brought by Talon against the Carney Fastener Corporation?

A. I do.

Q. And Poux patent '017 was one of the patents in that suit? A. That is correct.

(Testimony of Ralph E. Meech.)

Q. Do you recall that in 1948 a suit was brought in the same court by Talon against Closurette Corporation of America? A. That is right.

Q. And Poux patent '017 was involved in that suit? A. That is correct.

Q. One of the patents in the suit?

A. Correct.

Q. Do you recall that in 1949 a suit was brought by Talon in the same court against Star Fastener, Inc.? A. Yes, sir.

Q. And the Poux patent '017 was one of the patents in that suit? A. That is right. [460]

Q. And in 1949 in the United States District Court for the Eastern District of New York, suit was brought by Talon against Waldes Kohinoor, Inc.? A. That is right.

Q. And the Poux patent was one of the patents in that suit? A. That is right.

Q. And in 1948 suit was brought by Talon against Swan Fastener Corporation in the District Court for the District of Massachusetts?

A. Let me correct you there. Suit was not instigated by Talon as such. It was filed by David Silberman and Charm as indicated on the exhibit.

We acquired the suit together with all rights relating to the Silberman patent which also included that suit at that time.

Q. Now, returning to the suit against Carney Fastener Corporation, how did that suit terminate?

A. That terminated in a consent decree entered March 21, 1949.

(Testimony of Ralph E. Meech.)

Q. Was there any agreement made between the parties in that action? A. Not that I recall.

Q. Did the action go to trial? Was the consent decree entered after the trial or before there was any trial? [461]

A. There was no trial. It was entered before trial.

Q. And in the suit against the Closurette Corporation of America, how did that suit terminate?

A. The suit was merely dismissed in that case.

The Court: Which one was that, was that the Closurette case?

Mr. Graham: Closurette Corporation of America.

Q. (By Mr. Graham): Was any consideration paid by Talon in connection with the termination of that suit?

A. There was consideration paid for attorney fees.

Q. That was paid to the defendant in the suit, the Closurette Corporation of America?

A. I don't recall whether it was paid directly to the defendant or to his attorney, but it was paid.

Q. And the amount that was paid, if you recall?

A. I believe it was \$2,000.

Q. And there was no consent decree?

A. No, there was not.

Q. And no license was acquired by the Closurette Corporation of America?

A. That is right.

(Testimony of Ralph E. Meech.)

Q. Now, do you recall how the Star Fastener suit terminated?

A. It was settled by agreement dated December 21, 1949.

Mr. Mockabee: Will you speak a little louder, please? [462]

Q. (By Mr. Graham): Was that an agreement entered into before trial or after trial?

A. Yes, it was before.

Q. There was no trial in that action?

A. Before that case went to trial. No, there was no trial.

Q. And how did the suit against Waldes Kohinoor terminate?

A. That also terminated in an agreement.

Q. And that agreement was made before any trial?

A. That is correct.

Q. Had taken place? A. Yes.

Q. Do you know, Mr. Meech, whether or not Mr. Max Lange or the Slidelock Corporation are now in business?

A. I do not know.

Q. Do you know whether or not the Carney Fastener Corporation is still in business?

A. I do not know for sure but I think that they have sold their business and are no longer active as a corporation.

Q. And do you know whether or not the Closurette Corporation of America is still in business?

A. I do not know that for a fact, but I have been told that they are not.

Q. The Star Fastener Company? [463]

(Testimony of Ralph E. Meech.)

A. Yes, it is still in business.

Q. That is still in business?

A. (No answer.)

Mr. Graham: If your Honor please, I wish to offer in evidence Exhibit 5, Plaintiff's answers to defendant's interrogatories filed May 8, 1952.

The Court: All right, Exhibit 5 running from page 73 through page 78—

Mr. Graham: No, your Honor, only to 76. 77 has to do with the Swan Fastener suit.

The Court: All right.

The Clerk: One part of Exhibit 5 appears to be in evidence as Plaintiff's 11.

The Court: It is so marked but counsel can figure out what they want. 73, 74, 75 and 76, is that right?

Mr. Graham: That is correct, your Honor.

The Court: That will be Exhibit T in evidence.

(The document referred to, marked Defendant's Exhibit T, was received in evidence.)

The Court: Let me look at it. It could be stipulated as mutual releases and a dismissal, is that right?

Mr. Graham: That is right, your Honor.

The Court: All right, proceed.

Q. (By Mr. Graham): Mr. Meech, to your knowledge has there ever been any judicial determination of the validity of Poux [464] '017?

A. To the best of my knowledge there has not been.

Q. There has not? A. No.

(Testimony of Ralph E. Meech.)

Q. And that patent has now expired?

A. Yes.

Q. To your knowledge has there ever been any judicial determination of the validity of the Silberman patent in suit?

A. Not to my knowledge.

Q. Calling your attention now, Mr. Meech, to Plaintiff's Exhibit 11, which is an agreement between Talon and Conmar Products, Incorporated, January 1940—and that appears on pages 79 and so forth.

The Court: Through 89, inclusive. [465]

Mr. Graham: Through 89 inclusive. I call your attention to the third paragraph where patents belonging to Conmar are listed, and ask you whether you know that the application referring to Wintritz, serial No. 215180, is the application which matured into Wintritz patent No. 2,201,068.

The Witness: I think the record speaks for itself.

The Court: Do you mean that number has been penciled in there?

The Witness: Yes. But you can tell by looking at the patent, naturally.

Mr. Graham: Well, the patent is in evidence as Defendant's Exhibit L.

The Court: You couldn't pick up the application number. The patent doesn't contain the application number, does it?

The Witness: Yes.

Mr. Graham: It has the serial number.

(Testimony of Ralph E. Meech.)

The Court: Where?

The Witness: Down here (indicating). Every patent has the application number.

The Court: 215180. The record will show that Exhibit L contains the serial number 215180 as shown in this agreement Exhibit 11.

Can it be stipulated as to Exhibit 11 that the other numbers shown there in pencil or in ink, in writing, following the typewritten serial numbers, are the patent numbers of the [466] patents which issued?

Mr. Leonard Lyon: When a patent application is filed in the Patent Office, it is given a serial number, and it is known by that serial number until the patent is issued, and then it is given a patent number.

The Court: I understand.

Mr. Leonard Lyon: I can give you the patent numbers that were issued on these applications.

The Court: They are written in on the copy that I have got. That is why I am asking.

Mr. Leonard Lyon: We will stipulate that those are the correct numbers.

The Court: Those numbers in writing following the serial numbers are the numbers of the patents which issued on those applications shown by the serial number?

Mr. Leonard Lyon: We so stipulate.

Mr. Graham: We do.

Q. (By Mr. Graham): Mr. Meech, I call your attention now to page 83 of Exhibit 11, and to the

(Testimony of Ralph E. Meech.)

language on the third from the top line, starting with the words "Talon agrees that should Talon hereafter acquire any patent, patent application or invention, covering or defining any such process or machine, Talon will extend the license herein above granted to include any and all claims of such after acquired patent as cover or define any process or machine heretofore disclosed to [467] Talon by Conmar as having been developed heretofore by Conmar, as hereinabove specified."

Do you recall whether after the Silberman patent was acquired by Talon that Conmar had a license under this language, under the Silberman patent?

A. No, I do not.

Q. Conmar never did have a license under the Silberman patent? A. No.

Q. They never made any use of it?

A. That is correct. Or not to my knowledge.

The Court: Just a minute.

I can't make sense out of this one either. Can you tell me what interpretation you place on it? It makes sense until when you get down toward the end of it. "If Talon should acquire any patent or patent application or invention covering or defining any process or machine Talon will extend the license heretofore granted to include"—now from there on tell me what it means.

Mr. Graham: I think the sense of it is, your Honor, that Talon will grant to Conmar a license on any patent covering a machine or process that had been disclosed by Conmar to Talon, something

(Testimony of Ralph E. Meech.)

developed by Conmar, about which they had told Talon. If Talon should acquire any patent.

The Court: Do you mean the broad language in the beginning [468] part is limited by the latter part?

Mr. Graham: I think so, your Honor.

The Court: Is that your interpretation, counsel?

Mr. McCoy: Yes, your Honor.

The Court: It doesn't mean, therefore, if Talon should acquire a patent or patent application or invention apart from Conmar, that Talon would extend the license, also, to that patent?

Mr. McCoy: That is correct, your Honor. Unless the particular invention involved had to do with an invention that Conmar was using in—that Conmar already had as one of their own development. I think the intent and purpose there was if Conmar let Talon know of certain inventions that Conmar had developed, and Talon later acquired a patent or did development work of its own, Conmar would receive a license on that particular thing to negative any further controversies between the companies.

The Court: Do you agree?

Mr. Graham: I do, your Honor.

The Court: Then if you agree we will accept that as what the agreement means, although I have serious doubt that you can draw that meaning out of there without contorting the English language.

Mr. Graham: All I can say is that I didn't prepare the agreement, your Honor. [469]

Mr. McCoy: I didn't, either.

(Testimony of Ralph E. Meech.)

Q. (By Mr. Graham): Mr. Meech, again calling your attention to page 83, the subdivision 4 there, sales and royalty, do you interpret that to mean that quota restrictions were placed upon Conmar, that Conmar could not manufacture more than a certain specified number of zippers?

A. No.

Mr. Leonard Lyon: If your Honor please, it seems to me that some ambiguity should be laid before asking the witness how he interprets a written agreement. It should be a matter for counsel to discuss with the court.

The Court: Yes. I think it is pretty clear that there were two kinds of sales, quota sales and royalty sales. Quota sales up to a certain amount were free of any payment of royalty, and royalty sales began to operate for the year '40 after Conmar had made 52 million slide fasteners, being approximately 25 per cent of the net sales of slide fasteners by Talon during the previous year.

Mr. Leonard Lyon: I wanted to call your Honor's attention to the fact that slide fasteners are defined in this agreement on page 80, paragraph (b), and does not include any and every slide fastener, but only such slide fasteners as are covered by a claim or claims of any of the above recited letters patent of Talon under which Conmar is licensed.

There has been some statement made that this agreement [470] would affect the manufacture of slide fasteners that were not covered by Talon's

(Testimony of Ralph E. Meech.)

patents. It seems to me that there is no basis whatever for that. That the quota is limited to slide fasteners as defined in paragraph (b) on page 80. I think that may be the basis of the witness' answer. I don't know.

The Court: However, it is followed up by (d) on page 81, which is a more specific section. "For the purpose of fixing the quota hereunder"——

Mr. Leonard Lyon: But the term "slide fasteners" wherever used in the agreement is limited by paragraph (b). In drafting the instrument, slide fasteners in paragraph (d), and all paragraphs of the agreement, would be so limited.

The Court: Will there be any proof as to how this agreement was interpreted by the action of the parties? For instance, did Conmar estimate their quota on the basis of their total production, or did they segregate their production as being under their own patents or under Talon patents? And the same inquiry as to Talon, did Talon estimate Conmar's production based solely on production made by Conmar under the Talon patents?

Mr. Leonard Lyon: I think that is a question the witness can properly answer if he is informed.

The Court: Do you know?

The Witness: Yes, your Honor. I will tell you how this operated. Both parties each year interchange their production [471] figures. That was done I think in March of each year. Both Conmar and Talon's figures were based on their total production figures regardless of what machines were

(Testimony of Ralph E. Meech.)

used, because Conmar used only one process and Talon used only one process at that time.

I might add that Conmar's quota sales before this agreement was terminated, as you see it is cumulative, and by the end of the agreement their quota was close to two hundred thousand units.

Mr. Leonard Lyon: Two hundred million.

The Witness: Two hundred million. Excuse me.

The Court: How many did they report?

The Witness: Through those years I don't know, your Honor.

The Court: Well, did they ever pay you royalties?

The Witness: We never got a cent of royalty out of Conmar.

The Court: Now, going back. Did I detect a note of frustration or disappointment that you never got any royalties?

The Witness: Yes.

The Court: Did you expect to get royalties?

The Witness: Well, naturally, we thought we might be able to get some royalties, but it didn't work out that way, because our business was too good and their's increased the same. [472]

The Court: You said your figures were based on total production because Conmar only used one type of machine and Talon used one type of machine.

The Witness: That is correct.

The Court: Well, that situation existed at the

(Testimony of Ralph E. Meech.)

time the agreement, Exhibit 11, was entered into, did it not?

The Witness: That is correct.

The Court: There was no change, then, after the agreement was entered into?

The Witness: There still is no change, substantially.

The Court: Well, if that is true, what was the use of putting in all this language about operating under the Talon patents or operating under the Conmar patents, and so forth?

The Witness: Are you referring, your Honor, to the previous paragraph in question?

The Court: No. I am referring to this quota arrangement, quota arrangement and the definition of slide fastener units which Mr. Lyon called my attention to. Was there any contemplation, when this agreement Exhibit 11 was signed, that Conmar would acquire Talon machines or Talon would acquire Conmar machines? [473]

The Witness: No, I think it was done to clarify the reading of the agreement. In other words they were defining what they made in the way of a slide fastener and they wanted to make sure of what they were talking about in my opinion—that any slide fastener manufacturer would have to come within the terms of the patents under which they were licensed. You mean at that time it might be conjectured that they would use another machine?

The Court: But prior to execution of this agreement, Exhibit 11, Talon had brought a patent in-

(Testimony of Ralph E. Meech.)

fringement suit against Conmar claiming that Conmar in its production by the machines that they had, was infringing Talon's patent?

The Witness: That is correct.

The Court: I don't know where that takes us. I am as much at a loss now as when we started. Go ahead.

Q. (By Mr. Graham): Mr. Meech, to your knowledge did Conmar ever operate under the Poux patent '017? A. (No answer.)

Q. That was one of the patents listed in the agreement.

A. I cannot say definitely whether they have operated under that patent, although they have a license for it, for the simple reason that Mr. Konoff has never let me see his operations.

Q. Didn't the agreement give you any right to oversee his operations? [474]

A. Not to my knowledge.

Q. Or inspect his operations?

A. (No answer.)

Q. Now, during the period of this agreement did Talon operate under the Poux patent '017?

A. No, we did not operate under that patent on a metallic strip fastener. We did make a plastic fastener at that time which might be construed to come under the patent.

Q. You didn't consider the patent '017 a very practical patent, did you?

A. Oh, yes, we did, because—and it was further substantiated by our competitors in using it.

(Testimony of Ralph E. Meech.)

Mr. Graham: I object to that characterization by the witness, your Honor, and move it be stricken out—the words “substantiated by our competitors” is a conclusion of the witness.

The Court: That part after the words of the witness “Yes, we did” may go out.

Q. (By Mr. Graham): But you say that Talon itself did not operate under the Poux patent '017?

A. In 19——

Q. 1940?

A. 1940. To the best of my knowledge no, but I was not with the corporation at that time.

Q. Well, did they operate under that patent from 1940 [475] on?

A. Not in 1940——

Q. I mean from 1944 on.

A. Not in 1944 but shortly thereafter.

Q. Well, when did they first start operating under it?

A. When we first purchased a Silberman machine.

Q. When you first purchased the Silberman machine? A. That is correct.

Q. I am talking now about the Poux patent. You understand that?

A. That is what I am talking about.

Q. Was the Silberman machine a machine constructed under the claims of the Poux patent?

A. It employed the method of the Poux patent.

Q. Now, did you have any machines at Talon

(Testimony of Ralph E. Meech.)

that had been constructed by you to operate under the Poux patent?

A. Merely some experimental models but never used commercially.

Q. The only operations that you conducted then under the Poux patent were operations with Silberman's machine? A. That is correct.

Q. So when you say it is under the Poux patent that is only your interpretation of it?

A. (No answer.)

Q. That is your opinion that the Silberman machines [476] were made under the claims of the Poux patent?

Mr. Leonard Lyon: I object to that as argumentative. How could it be anything else but the witness' opinion?

The Court: He has answered the question. Objection sustained.

Q. (By Mr. Graham): Then until you acquired the Silberman machine, the first Silberman machine, the Poux patent '017 was really a paper patent, wasn't it?

A. No, it was not a paper patent.

Q. But there were no operations conducted under it—no machines constructed under it?

A. Well, the Poux patent relates to a method and not to an apparatus or machine.

Talon itself, as I said before, did not use the teachings of the Poux patent until—that is commercially, until it bought the first Silberman machine.

(Testimony of Ralph E. Meech.)

Q. Yet in 1940 when this Conmar agreement was made the Poux patent was licensed to Conmar?

A. That is correct.

Q. Now, the agreement, Plaintiff's Exhibit 11, was terminated by a new agreement between Talon and Conmar dated June 7, 1951, Plaintiff's Exhibit 12. It appears at pages 90—

The Court: Through 94 inclusive.

Q. (By Mr. Graham): 94 in the answers to interrogatories. [477]

Do you recall, Mr. Meech, the reason why the old agreement was terminated and a new agreement was made?

A. Yes, I do.

Q. Would you state what that reason was?

A. Yes. Conmar which, of course, is second to Talon, I hope in the industry, had spent and does spend a lot of money on research, the same as we do, and through the years, as exemplified by the patents that are issued, they received a number of patents and so did Talon.

Through the years they had acquired some patents that we needed and they were infringing some of ours, so to get the matter cleared up we sat down and negotiated this, what materialized into the agreement dated June 7, 1951.

The Court: What percentage of the market does Talon cover and what percentage does Conmar cover? You say they are your nearest competitor.

The Witness: Today or when?

The Court: Back on June 7, 1951.

The Witness: On June 7, 1951 Talon at that

(Testimony of Ralph E. Meech.)

time—incidentally, I have the figures right here for that particular year as long as you ask, which is reported by the certified public accounting concern of Haskins & Sells, where all slide fastener manufacturers that belong to the slide fastener association make their annual reports.

In the year 1950, according to these figures, Talon [478] averaged about 30 per cent of the market. In the year 1951 Talon had about 28 per cent of the market.

The Court: What did Conmar have? Do you have those figures?

The Witness: We don't get figures of our competitors, as I understand, your Honor. We just get our own figures from the association. They are kept in secrecy. This just gives the figures of the respective manufacturers who belong to the association.

I would judge theirs would be, oh, possibly half, if that high of Talon's percentage.

Mr. Graham: Your Honor, I object to that statement by the witness. I don't think he has any basis for the answer. It is pure guesswork. There is nothing to substantiate it. It is not good evidence.

The Court: Well, he has admitted it is only a guess. I guess you are right. It will have to go out.

What percentage of the market did Talon have in 1940, at the time of the execution of the agreement 11? Do you have the figures for 1939 and '40?

The Witness: No, I do not, your Honor. At that time Talon controlled—that is just immediately prior to the war, around 60 per cent in my opinion.

(Testimony of Ralph E. Meech.)

During the war, of course, there were no fasteners for civilian consumption. It was all military. [479]

After the war our percentage dropped materially and competition started to come into the picture to a greater degree.

The Court: We will take our recess at this time.

(Short recess.) [480]

Mr. Leonard Lyon: May the court please, in view of the scope of the defendant's examination, I ask leave to present to the court, when the case resumes next week, an amendment to our reply to the counterclaim in this case, setting up the appropriate section and subsection of the Code of Civil Procedure of the State of California as a bar to any damage that might have occurred or is alleged to have occurred to the defendant more than three years prior to the filing of the defendant's counterclaim.

Mr. Mockabee: What section is that?

Mr. Leonard Lyon: I will have to give you the appropriate section and subsection.

The Court: Is there any objection to permitting an amendment?

Mr. Graham: If your Honor please, I would like to have you reserve decision on that until we have had an opportunity to study the section.

The Court: Well, what difference would that make? You would find either the section applied or it didn't. The principle involved is the general question of whether a litigant should be permitted to amend during trial to avail himself of an available

(Testimony of Ralph E. Meech.)

defense or defenses. Maybe it is good or maybe it is bad.

Mr. Graham: This is a kind of a statute of limitations, then? [481]

The Court: Yes. He is referring to our California statutes of limitation.

Mr. Graham: I don't like to agree to it, your Honor, without at least looking into it a little bit. I would appreciate it if you would reserve decision on that.

The Court: Well, I will reserve decision, but I will advise you my policy is to always permit amendments prior to trial and even after the trial is over, to conform to proof. It goes to both sides.

Mr. Graham: It appears that it is not the type of an amendment that would be a surprise, or anything of that sort.

The Court: I will reserve ruling on it. Meanwhile you prepare it and have it ready for presentation.

This is an amendment to your answer——

Mr. Leonard Lyon: This is an amendment to the reply to the counterclaim.

The Court: And you are going to present this now as a complete new reply, or merely——

Mr. Leonard Lyon: No. Just an additional paragraph.

The Court: By a separate document?

Mr. Leonard Lyon: Yes, your Honor.

The Court: All right.

Q. (By Mr. Graham): Mr. Meech, I believe you

(Testimony of Ralph E. Meech.)

stated when this agreement of January '40, Plaintiff's Exhibit 11, was made, that Talon led in the manufacturing of zippers in this [482] country?

A. As far as I know today.

Q. And I think you also stated that Conmar was second in line?

A. I do not know whether at that time they were second, but they are today.

Q. Were they when this agreement of June 7, 1951, was made, Plaintiff's Exhibit 12?

A. As far as I know, they were the second largest zipper concern in this country.

Q. Mr. Meech, do you have any idea of the comparison between the percentage of profit on zippers licensed and the percentage of royalty payable under license agreements made by Talon?

A. That is a very broad question. The way it is put to me, I can't answer it.

Q. Well, is it a fact that where royalty is payable, the percentage of profit is smaller than if royalties were not payable?

Mr. Leonard Lyon: Your Honor, I think royalty would be a cost.

The Court: We will assume that premise.

Mr. Graham: Thank you.

The Court: If a person pays a royalty, his percentage of profit is smaller. [483]

But you can't answer as to your knowledge of what royalties obtained by Talon bear to profits of the licensees?

The Witness: Read the question, please.

(Testimony of Ralph E. Meech.)

(The court's question was read by the reporter.)

The Witness: No, I have no idea.

The Court: In the contract agreement Exhibit 11, January 1940, where you have a quota arrangement with Conmar, and then royalties over the quota, you had a sliding scale of royalties for the so-called royalty sales in excess of quotas up to 5 per cent over the quota, a royalty of 10 per cent; a royalty of 15 per cent for all units sold over and above 5 per cent beyond the quota—is that right?

The Witness: That is correct.

The Court: You are licensing your patents presently, are you, to various licensees?

The Witness: We try to.

The Court: Do you have a policy presently as to an approximate percentage figure that you ask for a royalty?

The Witness: Yes, your Honor.

The Court: What is that?

The Witness: On a quota control basis, and I can't recall what was the last license agreement that we did consummate on that arrangement, it has been some time ago, that was a quota, and then it was 5 per cent, if I recall, of all fasteners over those quota sales. It wasn't as it appears in [484] the Conmar agreement, that was changed in other agreements that we did negotiate, because the life of a patent of course was slowly running out, and that was merely where the licensee had either patents or pending patent applications, where we could

(Testimony of Ralph E. Meech.)

base something on a quota, free quota; where the licensee did not have anything to trade or any patent applications, then there was a straight $1\frac{1}{2}$ per cent royalty of net sales.

Mr. Leonard Lyon: Do you mean no free quota?

The Witness: That is right.

Q. (By Mr. Graham): But some agreements were made that did allow a free quota, isn't that correct?

A. That is correct. Where they had something to give back to us in the way of——

Q. That was something in your judgment that was worth—— A. Naturally.

Q. That had some value? A. Yes.

Q. Isn't it normal in patent license agreements, Mr. Meech, to have the royalty rate decrease as the volume goes up?

Mr. Leonard Lyon: I object to the term "normal." The answer would be irrelevant and immaterial in this case as to what is normal in patent agreements. There is no foundation laid, for one thing. [485]

Mr. Graham: Let me rephrase the question, if I may.

Q. (By Mr. Graham): Where there are sliding scales of royalties in patent license agreements, doesn't it more often happen that the royalty rates decrease as the volume of production goes up?

Mr. Leonard Lyon: I object to that question as irrelevant, immaterial, which one is the most often done, and it is not limited to any particular field or

(Testimony of Ralph E. Meech.)

any particular royalty or any particular circumstance.

The Court: Sustained.

What is done now or then or most often wouldn't enter into it, unless possibly you could prove some custom that was so widely known and accepted that it automatically would become part of contracts, and I don't think you can do that.

You have seen license agreements, have you not, where there are sliding scales?

The Witness: I have seen where they slide both ways, depending on the article.

Q. (By Mr. Graham): Would you say that it is more the case, then, that royalties go up as volume goes up?

The Court: I think that is the same question.

Mr. Leonard Lyon: I object for the same reason.

The Court: Sustained.

Q. (By Mr. Graham): Mr. Meech, do you have any opinion now as to the relative ratio of production between Talon and [486] Conmar at the present time? A. Dollarwise?

Q. No. I mean in percentage of production in the zipper industry.

A. My opinion that I would give would be just a guess. Do you mean as to the——

Q. You have stated that at one time it was your opinion that Talon had about 28 per cent of the production and that Conmar had about half of that percentage.

(Testimony of Ralph E. Meech.)

The Court: I think we sustained an objection as to that guess as to half, didn't we?

Mr. Leonard Lyon: That was Mr. Graham's objection.

The Court: And I think I sustained it, didn't I?

Mr. Leonard Lyon: Yes.

The Court: Now he is asking the question. Do you want to object to it?

Mr. Leonard Lyon: I have no objection, if the witness knows. Or if he has an opinion and he is asked for his opinion, I have no objection to his opinion.

The Court: All right. Can you answer the question?

The Witness: Read the question, please.

(The question referred to was read by the reporter, as follows: "Q. You have stated that at one time it was your opinion that Talon had about 28 per cent of the production [487] and that Conmar had about half of that percentage.")

The Witness: I made that statement.

Q. (By Mr. Graham): Do you care to state now whether you can give any opinion of the relative ratio of production at the present time between Talon and Conmar?

Mr. Charles Lyon: Do you care to make that question definite? The production reported to the Slide Fastener Association, or overall production?

Mr. Graham: Overall production.

The Witness: That would be difficult to answer

(Testimony of Ralph E. Meech.)

for this reason: The zipper market today is in a state of flux and conditions are very chaotic. You must remember that the reports that I gave you and that I base my knowledge on are reports that came from Haskins & Sells, who are accountants, and there are only a small percentage—and when I say “small” I mean about 25 per cent—of the people in the industry that belong to the Association and report their figures. So the figure that I quoted would really be less than what I have given. And I don’t believe, for example, that the defendant belongs to the Association. It is hard for me to quote the figure today, in view of the fact that there are so many assemblers and loft operators who do not belong to the Association.

The Court: In your opinion is Talon still the No. 1 producer? [488]

The Witness: In my opinion, yes, your Honor.

The Court: Who is No. 2?

The Witness: Conmar, as far as my opinion goes. [489]

Q. (By Mr. Graham): Mr. Meech, I call your attention to Exhibit 5, plaintiff’s answers to defendant’s interrogatories appearing on pages 119 to 132.

Mr. Graham: I think first I should offer that agreement in evidence, if your Honor please.

The Court: It will be Exhibit U in evidence. It is the agreement of November 21, 1949 between Talon, Star and Ridgewood. It runs from page 119 to what page?

(Testimony of Ralph E. Meech.)

Mr. Graham: 132, your Honor.

The Court: 119 to 132 of the plaintiff's answers to the interrogatories. It is received in evidence as Exhibit U.

(The document referred to, marked Defendant's Exhibit U, was received in evidence.)

Q. (By Mr. Graham): Mr. Meech, referring to page 124 at the top of the page under the heading "sales and royalties" it appears from the first paragraph of that section that Star and Ridgewood are relieved of any obligation to pay royalties on the first 30 million slide fastener units manufactured and sold by them in 1949, under machines or by processes covered by the license from Talon. Is that correct? A. That is correct.

Q. And then the agreement goes on, on the same page, to provide for further exemptions for future years, is that correct? [490]

A. That is correct.

The Court: What was the purpose of Talon in providing for these royalty-free exemptions and then providing for royalties over certain amounts?

The Witness: Well, the reason for that, your Honor, was that if a particular licensee had anything of value or anything that might be used by Talon in the future, we would then give them free licenses for a certain number of units.

We thought that our patents were of much more value and we were giving them much more value than they were giving us, but yet we wanted to respect their property and their patent rights and

(Testimony of Ralph E. Meech.)

also it was for our future use in the development of our product.

We at no time know when we will need a patent and if we can obtain rights by a cross-license agreement such as this, it is usually done that way.

The Court: Well, if you felt your patents were more valuable, your patents and rights than what the other contracting parties had, why didn't you fix some small royalty for the entire period of the agreement?

The Witness: Well, we thought—I can't answer that, why it was done or why it wasn't done that way at all.

It certainly was not to penalize the licensee because none of our licensees have been penalized, including the subject licensee—Star. Star never paid us any royalty whatsoever. [491]

The Court: Because they never went over the quota?

The Witness: That is correct.

The Court: Well now, a royalty of five, 10 or 15 per cent would be a pretty high and burdensome royalty, would it not?

The Witness: At this date yes, but not in 1939 or 1940.

The Court: What about 1949 relating to the agreement we are talking about?

The Witness: Yes, until the agreement of 1949, your Honor. After the war—during the latter part of the forties, there was a big market for zippers

(Testimony of Ralph E. Meech.)

and to show you—and the prices held during those years.

For example, a fastener which sold for 10 cents in the latter part of the forties today sells for three cents and naturally the licensee has a bigger margin to work on. And as you can see by this agreement with Star, even at that late date we cut the royalties down to three per cent.

The Court: Where does that appear?

The Witness: On page 7—page 125, your Honor, page 7 of the agreement.

The Court: Three per cent on sales in excess of the royalties agreed upon?

The Witness: That is correct.

The Court: Was it one of the intentions of Talon to [492] give these competitors a fair sized quota to operate under but to make it burdensome for them to expand beyond the size of their quota given them and thereby keep them in line, as it were?

The Witness: No, it wasn't the intention of Talon to do that at all. All we wanted was our patent rights respected.

If we had wanted to make it burdensome we could have. In other words, we could have given them such a small quota we would know very well that they would reach that quota, but our licensees were so confident in signing the license agreement that they never reached that quota—that they would never reach that quota, that they are willing to sign the license agreement.

(Testimony of Ralph E. Meech.)

The Court: Well, of course 30 million, the figure used in this contract, sounds like a lot of fasteners but everything is relevant.

How many fastener units did Talon make in 1949, if you know?

The Witness: 1949? I suppose Talon made between 300 and 400 million.

The Court: And how many did you make in 1945?

The Witness: I suppose the number of units is comparable to that, according to our profit figure.

The Court: About the same?

The Witness: About the same. [493]

The Court: Well, my mathematics aren't very good but 30 million as compared to 300 million is a tenth.

The Witness: That is correct, your Honor. But don't forget that this was a very small operator. He only had about 20 machines and at that time, if I recall correctly, he said that their production at that time in 1948, which was the year prior to this agreement, was 25 million. And you know very well that he was taking quite a leeway for himself there when we settled on 30 million so as not to penalize him.

And this was not based on Talon's production as you can see. There was a regular increase each year.

The Court: You mean Star was making 25 million a year or Ridgewood?

The Witness: Ridgewood is really Star.

(Testimony of Ralph E. Meech.)

The Court: It is one outfit.

The Witness: They are not in the zipper business. They make the machine and Star was the zipper manufacturer.

The Court: Star was making 25 million in 1949?

The Witness: Yes, the year previous to the contract. As I recall that was the figure they gave me.

The Court: Well, did you change your form of contracts thereafter or recently in order to eliminate this quota business from those contracts?

The Witness: No, we haven't had an occasion, your [494] Honor, to negotiate a contract where a quota control arrangement could be worked out.

The Court: You eliminated it in the Conmar contract in 1951?

The Witness: That was because we had to have some of their patents. We were infringing them at the time and they had to have some of ours, so we got our heads together, as licensees do from time to time, and ironed out the difficulties so they don't have to go to court.

The Court: Well, I don't know whether I can ask you this question or not. Counsel may object to it. But did you consult any lawyer who was or claimed to be a specialist in antitrust laws in connection with whether or not these quota contracts were possibly violative of the antitrust laws?

The Witness: I did not and in my opinion what I know of antitrust laws is very small. I don't think anybody knows very much about it. I didn't consult anyone, to answer your question. This agreement

(Testimony of Ralph E. Meech.)

was negotiated by Mr. McCoy and myself. There was no other counsel consulted except the licensee's counsel.

The Court: Proceed.

Q. (By Mr. Graham): Mr. Meech, you stated in answer to some of Judge Carter's questions that the scale was allowed to increase here — in other words they started off with a 30 million quota free units and then it was stepped up. [495] But I call your attention to the last three lines on page 124 of this Star agreement which provides that commencing with the year 1950 royalty-free sales shall remain at 30 million slide fastener units. Is that correct?

A. That is not correct. That was just an example given, was it not?

The Court: Yes.

The Witness: It was an example of where their sales fell below a certain amount.

The Court: All right. I will read it. Go ahead.

Q. (By Mr. Graham): Going back a moment, Mr. Meech, to Plaintiff's Exhibit 11, the first agreement with Conmar, is it a fact that under the terms of that agreement Conmar was not allowed to grow in production percentage in relation to Talon's production? I will have to find that reference, your Honor.

Mr. Leonard Lyon: If your Honor please, I object to the question unless it is limited to the amount of use of Talon's inventions by Conmar. There is nothing to put any limitation on how much

(Testimony of Ralph E. Meech.)

Conmar can manufacture. Conmar can manufacture things outside of Talon's inventions.

The Court: Well, more than that it calls for the witness' interpretation of the contract and I can read it over. Objection sustained.

Q. (By Mr. Graham): Now, speaking about the second [496] Conmar contract made in 1951. Can you say whether or not the fact that defenses of misuse of patents and a counterclaim based on violation of the antitrust laws have been interposed in this case now being tried had anything to do with the making of a new agreement with Conmar?

A. It did not.

Q. They were wholly unconnected?

A. That is correct. In fact I might add we were approached by Conmar to alter the agreement. We did not instigate it.

Q. But you weren't reluctant to make the agreement?

Mr. Leonard Lyon: I object to that.

The Court: Sustained. We have one more agreement in this file. [497]

Mr. Graham: I think there are two, your Honor. I find that I skipped one back along the line here. I will just introduce it in evidence.

The Court: Where does it appear?

Mr. Graham: Page 105 to 115.

The Court: That will be Exhibit V. Received in evidence. That is the contract between Talon, Slidelock, and Max Lange. What is the date of it? It doesn't show on the first page.

(Testimony of Ralph E. Meech.)

It is dated June 12, 1947. Exhibit V received in evidence.

(The document referred to was received in evidence and marked as Defendant's Exhibit V.)

Q. (By Mr. Graham): Mr. Meech, referring again to Defendant's Exhibit U, the agreement between Star and Talon, page 120, reference is made to the fourth paragraph, to a patent application owned by Star, serial No. 96649, filed on behalf of Kaufmann. Do you know whether or not that application matured into a patent?

A. Yes, sir, I believe it matured into a patent just within the past year or six months.

Q. And was that the only invention under which Talon received a license from Star and Ridgewood?

A. That is the only patent application that was pending. I don't recall whether there is anything in the agreement [498] now as to other inventions.

Mr. Leonard Lyon: The agreement will speak for itself, your Honor, on that.

The Court: Yes, it will speak for itself. If somebody later on can find the patent number of that patent, all right. If not, we will forget about it.

Q. (By Mr. Graham): You stated that Talon was giving value rights to Star and Ridgewood, and I notice it included, among the patents under which Star and Ridgewood were licensed, the Poux 2,078,017. You considered that one of the valuable

(Testimony of Ralph E. Meech.)

patent rights that you were giving to Star and Ridgewood? Page 122. A. Yes.

Q. Even though that patent had never been used by yourself?

Mr. Leonard Lyon: I object to that as argumentative.

The Court: Overruled.

The Witness: The patent was being used by ourselves at that time.

Q. (By Mr. Graham): I understand your testimony to be that you had never operated under the Poux '017, that no machine had ever been constructed.

A. I said until we got the Silberman machine.

Q. You never constructed any machines under the Poux patent; it was your judgment that the Silberman machines [499] incorporated the principles of the Poux patent?

Mr. Leonard Lyon: My same objection that was already overruled, but I tender it again, your Honor, in view of the colloquy.

The Court: I wasn't listening to it. You will have to read it, Mr. Reporter.

(The record was read by the reporter.)

The Court: That has been asked and answered, and for other reasons it is sustained.

Let me ask you this: You acquired the Silberman patent on April 18, 1949, by Exhibit 8?

The Witness: Correct.

The Court: How did it happen that on Novem-

(Testimony of Ralph E. Meech.)

ber 21, 1949, you didn't list the Silberman patent in the patents which you were giving Star?

The Witness: Because Star didn't need a license under the Silberman patent. Their machine did not incorporate the principle shown—used by Star. Star was the licensee of Conmar, and they were using a Conmar type machine.

The Court: But you listed in the contract of November 21, 1949, Exhibit U to which I have been referring, the Poux patent '017?

The Witness: That is correct.

The Court: Which there is a lot of similarity with Silberman's '793, isn't there? [500]

The Witness: No, your Honor, there is not. The Silberman patent employs the Poux method. There is a distinction between method and the machine, your Honor.

Conmar had a license under '017, but they don't need a license under the Silberman patent to operate their equipment. And there are several other people in the industry that have machines that are not covered by the Silberman patent.

The Court: That was your basis for eliminating the Silberman patent from certain of these contracts, then, the people were not using a Silberman machine?

The Witness: That is correct. As I said the other day, the only parties, your Honor, that are using a Silberman machine are ourselves and allegedly the defendant, and one or two others.

(Testimony of Ralph E. Meech.)

Q. (By Mr. Graham): Mr. Meech, could the Poux method be used with the Conmar machines?

A. Yes, it could.

Q. Is it actually used with the Conmar machines? A. In my opinion, yes.

Q. Weren't the Conmar machines in existence before the Silberman machine? A. Yes.

The Court: Well, does Conmar use machines that are similar to the Silberman machine?

The Witness: No, sir. [501]

The Court: Then why in Exhibit 12, your contract with Conmar, on June 7, '51, did you include the Silberman patent, Silberman patent '793?

The Witness: No doubt at the time of negotiations Conmar probably requested a license under that patent for future operations. As far as needing a license, they did not need a license under that machine at that time. The parties at that time of negotiations, naturally, were trying to get all they could from one another, and we would have to give and take.

The Court: Let's get the rest of these contracts in evidence that you are going to use and sort of finish up with this. There are a lot of these questions that are questions that go to interpretation of the contract. I could read them, and if you want to point something out, you can point it out to me.

What other contracts in these answers do you have?

Mr. Graham: The next one is with Waldes Koh-i-noor, dated May 10, 1950.

The Court: That will be Exhibit W. Received in evidence by that number as an exhibit of defendant.

How far does it run?

Mr. Graham: Page 133 to page 137.

The Court: Of the answers to interrogatories. Very well.

Mr. Graham: If your Honor please, there were other agreements [502] not attached to the answers to interrogatories, because there were so many in number that the cost of reproduction would have been extensive, but those agreements I understand have been produced in court today in accordance with the plaintiff's statement at the time that it did not attach copies.

The Court: Well, have you looked them over?

Mr. Graham: Frankly, I haven't, your Honor. I looked them over about two years ago at the Talon office in New York City and I made some notes at that time.

The Court: How much longer will you be with cross examination of this witness?

Mr. Graham: I think with the introduction of this agreements into evidence and one or two other questions, that will be all, your Honor.

Mr. Leonard Lyon: How many of these other agreements are there, I wonder.

Are we going to ask the court to read a limitless number of agreements in this case?

Mr. Graham: I will comb them and only give you those that have quota clauses similar to these others that we have been talking about. [503]

Mr. Leonard Lyon: Your Honor understands that these particular agreements that contain these quotas are only a fraction of the licenses that the Talon company has issued.

That is a material fact. I mean it is not claimed that they were the sole pattern of licensing.

Mr. Graham: I think that should be made a matter of evidence, Mr. Lyon.

The Court: Well, of course, counsel's statements on either side are not evidence.

I am going to take an adjournment at this time until Tuesday morning and let counsel have an opportunity to go through these exhibits and find out which ones you are going to offer.

Your last exhibit number was Exhibit W and the clerk and I would like for the second series instead of being numbered AA and BB and CC and so forth, be numbered AA, AB and AB and so forth. By doing that we do not exhaust the alphabet.

You might as well mark tentatively the exhibits you anticipate offering and have them all ready to go in on Tuesday morning.

I notice in the answers to interrogatories that we have been working on, the ones filed March 8, 1951, also contain miscellaneous matter such as consent decrees, stipulations and so forth.

If you want any of those marked in evidence you will [504] follow the same pattern.

Also you had better over the weekend go through your answers to interrogatories generally and find out which of those you want.

If you want me to consider interrogatories as

part of the record you should call my attention to them and have them made specifically a part of the record.

Up to this time it is only a discovery process that you may or may not use.

Is there anything further this evening?

Mr. Mockabee: That will be 10:00 o'clock Tuesday?

The Court: Well, how do we stand? How many witnesses do you have now, Mr. Mockabee and Mr. Graham?

Mr. Mockabee: Well, at the present time we have one witness. It may develop that we will have to call in another witness or two for very brief testimony, but I am not sure that we will even require that.

It will be primarily the testimony of Mr. Lipson.

The Court: And rather lengthy?

Mr. Mockabee: I am afraid it will be.

The Court: Is that your case then?

Mr. Graham: With the other deposition.

Mr. Mockabee: With the exception of the other deposition.

The Court: All right, 10:00 o'clock Tuesday morning. [505]

(Whereupon, at 4:15 o'clock p.m. a recess was had until 10:00 o'clock a.m., Tuesday, March 8, 1955.) [506]

Tuesday, March 8, 1955, 10:00 o'clock A.M.

The Clerk: No. 10450-C Civil, Talon, Inc., vs. Union Slide Fastener, further trial.

Mr. Leonard Lyon: If your Honor please, at this time the plaintiff would like to move to file an amendment to its Reply to the Counterclaim in this action. I hand a copy of the motion and a copy of the proposed amendment annexed to the motion. The motion is to add a paragraph to the reply setting up a bar under the statute of limitations to defendant's right to recover in this action on its counterclaim.

You will note that there are three different sections of the Code of Civil Procedure cited, and that is because of some uncertainty in the law of California as to just what the statute is in connection with a cause of action of this kind. It may be barred—the period may be one year under Section 340; others take the view that it is three years under Section 338; and others take the view that it is four years under Section 343, depending upon whether the action is one for penalty, or statute, and so forth.

The Court: We will have to cross that bridge when we get to it.

Have you exhausted your research on that?

Mr. Leonard Lyon: I formulated this reply in view of the situation that has developed in a case before Judge Mathes, [509] where this form of pleading was finally arrived at, and I don't think it is probably worth while arguing it at this time which one of these sections would apply.

The Court: All right.

Is there any objection to filing the amendment?

Mr. Graham: I have no objection, your Honor,

to the interposition of the reply which sets forth the provisions of certain sections in the Code of Civil Procedure of California, upon the understanding of course that we will have the opportunity to present a brief on the questions presented by the reply.

The Court: I will probably want some help, but I am not going to make any order that I will permit briefs or that I will even permit arguments. That is something that I will decide. The chances are that I will want it. But I will not make it a condition of the order.

The amendment will be permitted. It may be filed.

Let me look at these communications lying on my desk here.

Let the record show, before I forget, that I have read the deposition of Philip Lipson, which has been received in evidence, with particular attention to the pages indicated by counsel, and I have clipped that little note in the front part of the deposition so that we will know what I was looking at particularly. [510]

I have not yet read the deposition of Loew.

Mr. Leonard Lyon: May the court please, the defendant has handed us a copy of its note to the court this morning suggesting that the matter of proving damages under the defendant's counterclaim be reserved until the court renders its decision on the merits of the counterclaim.

We want to object to that proposal and call the

court's attention to the fact that the defendant has no right to a decision or to a judgment on its counterclaim until and unless it proves damages, and the defendant is not a public prosecutor under the antitrust laws, and explicitly in the statute the defendant has no cause of action arising out of any alleged violations of the antitrust laws except to the extent that it can prove damage.

We had a somewhat similar decision in the next court room some years ago before Judge Jenney, and he wrote an opinion on such a counterclaim as this and what the defendant is called upon to prove, and I am sure your Honor is familiar with it, but the citation might be of assistance to your Honor. It is International Carbonic Engineering Company vs. National Carbon Products, 57 F. Supp. 248, a decision rendered by Judge Jenney on July 15, 1944.

I thought that might illustrate to your Honor the situation as we see it.

We certainly would object to a decision as asked by the [511] defendant on the antitrust issues in the absence of any proof of damages.

We cannot understand on what theory—there is no theory shown in the defendant's pleading—that these quotas that defendant is calling attention to, if they had existed and had restrained trade, could possibly damage the defendant, because if anything, if they restrained other people, and the defendant was in business, the defendant would have been benefited, rather than injured, by it.

There is no claim that the defendant was a party

to any agreement on any quotas. It is beyond my conception of how the quotas could injure the defendant.

And as to the legality of the quotas, I might call your Honor's attention to this decision, if you are interested in looking at the subject as we go along. The latest case that I know of on the subject of these quotas is *Q Tips vs. Johnson*, 109 F. Supp. 657.

That was a case involving a similar charge as is made here, and the court held there was no violation of the law in quotas under circumstances such as we intend to prove here.

There were several decisions of the court rendered in that case, and there is an affirmance of the decree below in 207 F. 2d 509 by the Court of Appeals for the Third Circuit, in which the Court of Appeals says, on the questions of alleged violation of the antitrust laws and misuse, the decision below [512] was correct on the facts and correct as to the law.

I am not entirely sure that the Court of Appeals was talking about these precise rulings, but I believe they were, and we are trying to examine the records to verify that fact.

The Court: Your statement as to what a party must prove to make out a private antitrust case is the law. However, although the entire case has to be made out before a cause of action exists, it is entirely possible in the conduct of a trial to separate issues and try issues separately, is it not?

Mr. Leonard Lyon: Well, what I am objecting

to is the defendant's suggestion that there be a decision——

The Court: Supposing I came to the conclusion that there was no violation of the antitrust laws, and had a firm decision to that effect in my mind, wouldn't it be silly to take a lot of evidence? [513]

Mr. Leonard Lyon: I wonder as a matter of procedure, what our court of appeals would think about stopping the case and sending it up to them on that basis without a complete record on damages if they wanted to reverse it.

The Court: I am just trying to analyze the defendant's suggestion. I am not indicating that we will not go along but I might piecemeal make some decisions as we do go along. By so doing the defendants would then be advised and could then do as they see fit.

Supposing I found there was no violation of the antitrust laws then it would be up to the defendants to decide whether they wanted to make a record or whether they wanted to stop there.

If they wanted to make a record they would have a right to make it one way or the other by an offer of proof if not by direct testimony.

However, I am just quibbling with you about your broad statement concerning what we can do and what we cannot do.

My own inclination is we should go ahead and conclude this case and whatever is going to be done we can do it as we go along.

I may elect, if the defendants want me to do so,

or indicate what I think of these things as we do go along.

Mr. Leonard Lyon: I have had so many strange things happen in the court of appeal where a judge held and ruled [514] on points that he thought in his mind was sufficient to dispose of the case and the court of appeals sending it back for rulings on other issues before they will consider the issue that was sufficient in the mind of the lower court.

I just wanted to be on record as preserving my rights, if I have any.

The Court: You have rights, Mr. Lyon.

My inclination is to proceed with the case. If the defendants want an expression from the court as to my views after we complete some phase of the case I will take that into consideration.

You may proceed.

Mr. Graham: If your Honor please, I would like to have the witness Mr. Meech take the stand.

If your Honor please, I find that there are some other exhibits to the interrogatories filed May 9, 1952 which I would like to offer in evidence.

The Court: Very well.

Mr. Graham: The first one is the agreement between the plaintiff and Joy Fastener Company which appears at pages 95 to 104.

The Court: What exhibit will that be, Mr. Clerk?

Mr. Graham: X, I believe, your Honor.

The Clerk: Yes, Exhibit X.

The Court: Exhibit X received in evidence being

the [515] agreement of October 10, 1938, is that right?

Mr. Graham: That is right, your Honor.

The Clerk: Pages 95 to 104, inclusive.

(The document referred to, marked Defendant's Exhibit X, was received in evidence.)

Mr. Graham: 104. And I wish to call particular attention, your Honor, to paragraph 1 on page 97 of Exhibit X.

The Court: Paragraph 1 does not appear on page 97. It is paragraph 2.

Mr. Graham: Paragraph 2. I am sorry, your Honor. It is paragraph 2. I just put on my glasses. I can read better with them.

And the paragraph 5(d) which appears on page 98, and paragraph 9 (b) which appears on page 101.

I also wish to offer in evidence, your Honor, the stipulation between Talon and Carney Fasteners, Inc., which appears at pages 116 and 117—116, 117 and 118. That is a stipulation and decree in the case just mentioned.

The Court: The Carney case?

Mr. Graham: The Carney case, yes, your Honor.

The Court: It will be received as Exhibit Y. I don't know whether I said Exhibit X was in evidence or not, but Exhibit Y and Exhibit X are in evidence.

(The document referred to, marked Defendant's Exhibit Y, was received in evidence.)

Mr. Graham: And I also offer in evidence a list of the names and addresses of persons or firms

holding licenses from plaintiff who are members of the Slide Fastener Association which appears at page 139 of the interrogatories.

The Court: It will be received in evidence as Exhibit Z.

(The document referred to, marked Defendant's Exhibit Z, was received in evidence.)

Mr. Graham: If your Honor please, you indicated on Friday that if the defendants wish to have you consider any of the interrogatories and answers to interrogatories that you would like to have them pointed out.

I have a list here of the interrogatories to which I would like to call your Honor's attention.

The Court: Well, just so the record will be clear, the following interrogatories and the answers you want in evidence as part of the record you are going to designate, is that correct?

Mr. Graham: That is correct, your Honor.

The Court: All right, just list them.

Mr. Graham: No. 7, No. 15—

Mr. Leonard Lyon: There are several sets of interrogatories, your Honor.

Mr. Graham: These are the interrogatories filed May 9, 1952.

The Court: The answers were filed May 8th.

Mr. Graham: I am sorry, I mean the answers were filed at that time.

The Court: The interrogatories were apparently served in March but the answers to the plaintiff's—the plaintiff's answers to the interrogatories were filed May 8th, 1952. It is from that document that

you are listing the interrogatories and answers that you refer to?

Mr. Graham: It is from that document, yes.

The Clerk: The answers including the questions?

The Court: Questions and answers, yes. Interrogatory No. 7, 15——

Mr. Graham: 16, 17, 19, 20, 21, 24, 27, 28, 34, 52, 68, 82, 83, 86, 87, 88, 92, 95, 97 and 98.

The Court: All right. Now, 83 was filed separately. The answer to 83 does not appear in that document.

Mr. Graham: On the copy I have, your Honor, they were right at the top—were on the top paper of the document.

They were sworn to by Mr. Detweiler, I believe, separately from the other interrogatory answers.

The Court: I have found the separate answer to interrogatory 83. It is signed by William Jager on behalf of Talon, Inc. It was filed on May 8, 1952.

The Clerk: Should these interrogatories and answers be copied into the record?

The Court: Yes, I think it will make it more clear. [518] The reporter at this point will copy the interrogatories and answers indicated by Mr. Graham into the record.

The Clerk: The original on file has an answer in the same document, Exhibit 83.

The Court: You say there is an answer to 83?

The Clerk: Yes, it is written into the document.

The Court: That is the interrogatory. The answer is here. It was submitted separately.

(The interrogatories and answers indicated are in words and figures as follows:

“Interrogatory No. 7: Was plaintiff at any time prior to the institution of this action informed by anyone that said David Silberman had threatened to sue one Sigmund Loew and/or Union Slide Fastener, Inc. under said United States Letters Patent No. 2,437,793 prior to the assignment of said Letters Patent by said Silberman to plaintiff?

“Answer: Prior to the institution of this action, plaintiff had been informed by David Silberman that he was considering suing Union Slide Fastener, Inc. for infringement of U. S. Letters Patent No. 2,437,793, but plaintiff had no knowledge of any actual threat of suit having been made to either Sigmund Loew and/or [519] Union Slide Fastener, Inc.

“Interrogatory No. 15: Was the plaintiff at any time prior to the institution of this action informed by anyone that a person other than said David Silberman claimed to be the inventor of the inventions described in and covered by United States Letters Patent No. 2,437,793?

“Answer: Prior to the institution of this action but subsequent to the purchase of patent No. 2,437,793 by plaintiff, plaintiff was informed of the existence of an affidavit by one John J. Havekost, purportedly dated September 8, 1948, and plaintiff was informed of the withdrawal of any claims to inventorship which may have been made in such affidavit, which withdrawal was made by an affidavit dated the 22nd day of August, 1949, a photostatic

copy of the latter affidavit being attached hereto and marked Exhibit 2.”

“Interrogatory No. 17: Was the plaintiff at any time prior to the institution of this action informed that the said David Silberman had paid to a person or persons claiming to be the inventor of the inventions described in and covered by U. S. Letters Patent No. 2,437,793 a royalty or other payment? [520]

“Answer: Only to the extent that plaintiff’s Exhibit 2 contains the information suggested by the interrogatory.”

“Interrogatory No. 19: Did the plaintiff request the defendant which was then located at 10731 Chandler Boulevard, North Hollywood, California, in or about the month of September, 1947, to permit the plaintiff to have its representative examine the defendant’s manufacturing operations?

“Answer: Yes.”

“Interrogatory No. 20: Did the defendant agree to permit a representative of the plaintiff to inspect defendant’s production machinery for manufacturing slide fasteners and/or stringers therefor?

“Answer: Yes.”

“Interrogatory No. 21: Give the full name and title in the plaintiff’s organization of one Grosvenor McKee.

“Answer: Grosvenor S. McKee, Vice President, [521] Works Manager, and a Director of Talon, Inc.”

“Interrogatory No. 24: If the answer to the preceding interrogatory is in the affirmative, please

state the date on which such inspection was made.

“Answer: The inspection was made on or about April 15, 1948 at 10731 Chandler Boulevard, North Hollywood, California.”

“Interrogatory No. 27: Did the said McKee make any report to plaintiff following his inspection of defendant’s machinery and equipment?

“Answer: Yes.”

“Interrogatory No. 28: If the answer to the preceding interrogatory is in the affirmative, please state the nature and contents of such report and the date on which such report was made to plaintiff.

“Answer: Attached hereto and marked Plaintiff’s Exhibit 3 is the report of Grosvenor S. McKee to the plaintiff, dated April 29, 1948, to which interrogatories 27 and 28 refer.” [522]

“Interrogatory No. 34: State whether the claims of any of the patents listed in interrogatory No. 30 have been interpreted by a duly constituted Court of competent jurisdiction as to their scope, and the titles of the actions in which such interpretations were made and the name and location of the Court making any such interpretation.

“Answer: Only as shown by the information contained in Plaintiff’s Exhibit 4.”

“Interrogatory No. 52: If the answer to the preceding interrogatory is in the affirmative, state the nature and extent of such use, the date on which such use was commenced, and the persons involved in said use.

“Answer: About April, 1947, plaintiff first used

machines embodying the invention of U. S. Letters Patent No. 2,437,793, and, except for a preliminary test period, has continued to use such machines in extensive commercial operations since that date and at present is operating 16 of such machines at plaintiff's Wilson Division in Cleveland, Ohio, and is operating other machines in its subsidiary plant, Cierre Relampago S.A. de C.V., Mexico City, Mexico. Wilson Division [523] was originally managed by Harold W. Soles, presently managed by David E. Case. Mexican operations under management of F. N. Rutherford."

"Interrogatory No. 68: State the name and address of each firm or individual manufacturing slide fasteners or slide fastener chain or components who were invited or urged to obtain licenses from plaintiff under any one or more of the patents here in suit for their manufacturing or other operations in connection with slide fasteners or slide fastener chain.

"Answer: The meaning of the term 'invited' as employed in interrogatory 68, is not understood. The parties to whom plaintiff expressed a willingness to grant such licenses include the defendants in all of the suits listed in the answer to interrogatory 30, as shown by the agreements supplied in answer to interrogatory 36. While licensing proposals were discussed generally with numerous other firms or individuals, including the present defendant, plaintiff has been unable to ascertain that any specific licensing proposal has been made by plaintiff to each such other firm or individual."

“Interrogatory No. 82: Was a meeting held in the Los Angeles office of Talon, Inc., during 1949 at which representatives of plaintiff and representatives of other firms engaged in the slide fastener industry were present?

“Answer: Yes.”

“Interrogatory No. 83(a): If the answer to the preceding question is in the affirmative, state:

“(a) What companies engaged in the slide fastener business were represented at said meeting.

“Answer: California Slide Fastener Company, Roxy Thread Company, Union Slide Fastener Company and Talon, Inc.”

“Interrogatory No. 83(b): (b) the names of the representatives of each company represented at said meeting, including the exact names of the representatives of the plaintiff.

“Answer: California Slide Fastener Company by Mr. Eisenburg; Roxy Thread Company by Mr. Knapp; Union Slide Fastener Company by Mr. Philip Lipson; and Talon, Inc. by Messrs. William B. Jager and C. F. Detweiler.” [525]

“Interrogatory No. 83(c): (c) at whose request such meeting was held.

“Answer: The meeting was held at the request of Mr. Knapp of California Slide Fastener Company, Roxy Thread Company and Union Slide Fastener Company relayed to Talon, Inc. through Apparel Manufacturing Supply Company.”

“Interrogatory No. 83(d): (d) the purpose of said meeting.

“Answer: The purpose of the meeting was to discuss market conditions.”

“Interrogatory No. 83(e): (e) state whether any discussion was had at said meeting concerning the then current prices of the standard 7 inch skirt zipper.

“Answer: Yes.”

“Interrogatory No. 83(f): (f) specify the cost of manufacture at that time of the standard 7 inch skirt zippers manufactured (1) by Talon; (2) by Wilzip Corporation.

“Answer: Affiant does not have the information sufficient to answer this interrogatory, and [526] the interrogatory is immaterial, improper and irrelevant and seeks to pry into information which is a trade secret of plaintiff. At no time have Wilzip zippers, as manufactured by the Wilson Division of Talon, Inc., been shipped into this competitive market.”

“Interrogatory No. 83(g): (g) state whether a representative of plaintiff advised those present at said meeting that unless they maintained a price of .045 for standard 7 inch skirt zippers, plaintiff would take retaliatory measures by selling the Wilzip brand 7 inch zipper at less than .045 ‘just as plaintiff was doing in the East, to-wit, selling said 7 inch zippers at .035, thereby forcing the smaller slide fastener manufacturers out of business.’

“Answer: No.”

“Interrogatory No. 83(h): (h) state whether a representative of Talon, Inc. also stated that Talon, Inc. was going to introduce its Wilzip brand on

the Pacific Coast and that unless the other local manufacturers maintained the price of .045 for 7 inch zippers, Talon would offer their Wilzip zippers at .0375 or .035 or even as low as .02. [527]

“Answer: No.”

“Interrogatory No. 86: State whether plaintiff is a member of the Slide Fastener Association.

“Answer: Plaintiff is a member of Slide Fastener Association, Inc., having its office at One Wall Street, New York 5, N. Y.”

“Interrogatory No. 87: State whether Wilzip Corporation is a member of the Slide Fastener Association.

“Answer: The Wilzip organization to which interrogatory 87 appears to refer is not a separate corporation but is merely a division of Talon, Inc. and is not itself a member of any such association.”

“Interrogatory No. 88: If the answer to either or both the preceding two questions is in the affirmative, state when plaintiff became a member of such association and when Wilzip Corporation became a member of said association.

“Answer: Plaintiff became a member of the association at its inception, namely, May 2, 1950.”

“Interrogatory No. 92: State the names and home addresses of any persons or firms holding licenses from plaintiff or Wilzip Corporation under patents owned by plaintiff or Wilzip Corporation under patents owned by plaintiff or Wilzip Corporation who are members of the Slide Fastener Association.

“Answer: See attached list, Plaintiff’s Exhibit 7. Wilzip Division owns no patents.”

“Interrogatory No. 95: State whether plaintiff has made any use of the trade name and facilities of Wilzip Corporation.

“Answer: The Wilson Division of Talon, Inc. has used and uses its trade name and facilities, and the Wilson Division is a part of Talon, Inc. To this extent, the trade name and facilities of the Wilson Division have been used by Talon, Inc.”

“Interrogatory No. 97: Is the plaintiff aware of a widely published prospectus on the letterhead of one David Silberman of 10 MacDougal Alley, New York, New York, dated September 25, 1949 and purporting to expound a plan to cure the ills in the slide fastener industry? [529]

“Answer: Yes.”

“Interrogatory No. 98: If the answer to the preceding question is in the affirmative, was Talon, Inc. aware of the listing of its name on the aforesaid letterhead in the upper left-hand corner of the letterhead of the aforesaid prospectus under the heading of ‘United States’?

“Answer: Plaintiff was not aware of the listing of its name on such letterhead until after the prospectus was mailed and sent to the trade. At that time, it then objected to such use of its name on its letterhead.”)

Mr. Leonard Lyon: Would it be of any assistance to the court of these questions and answers in evidence here now be reproduced in the transcript at this point so the court wouldn’t have to go through all these documents.

The Court: Where were you two minutes ago?

Mr. Leonard Lyon: I was talking with my associate.

The Court: Mr. Lyon, that is just what went on here. The suggestion was made and I directed the reporter to copy the questions and answers into the record. [530]

Mr. Leonard Lyon: I am glad I agree with the court for once.

The Court: I don't want the record to read as it sounds when I said "Where were you a few minutes ago?"

The record will show that we were treating this in a rather humorous manner. There was some other work going on at counsel table and Mr. Lyon did not hear the remarks of the court. [531]

Mr. Graham: If your Honor please, with respect to a defendant's Exhibit U already admitted in evidence, I would like to direct your particular attention to paragraph 5, subdivisions (c) and (d), both of which appear on page 129 of the May 8 answers to interrogatories; May 8, 1952.

The Court: (c) and (d)?

Mr. Graham: Yes, sir, (c) and (d).

The Court: Do you see anything particularly wrong with that?

Mr. Graham: Only as part of the whole picture.

The Court: It is just one of the bricks in the wall.

When I read these over, I was more impressed—I won't say more impressed—but more interested in Exhibit U, page 122, the stipulation that the ac-

tion pend as long as possible from year to year.
The bottom part of page 122.

Mr. Graham: If that wasn't directed to your attention, your Honor, I thought it had been.

The Court: I suppose primarily that is a problem for the court in which the action was pending, but it might be subject to some inferences.

All right.

Mr. Graham: If your Honor please, there were further answers to interrogatories propounded by defendant, which were filed in court on February 19, 1953, and attached to that document are two agreements which I wish to introduce in evidence, [532] offer in evidence.

The Court: This was the series of interrogatories that ran commencing with No. 107?

Mr. Graham: That is correct, your Honor.

The Court: All right.

Mr. Graham: The first agreement which I wish to offer in evidence is an agreement dated June 19, 1945, between G. E. Prentiss Manufacturing Co. and Cap-Tin and David Silberman, which appears at pages 32 to 48 of that document.

The Clerk: Does that include page 48?

Mr. Graham: Yes.

The Court: That will become Exhibit AA, Mr. Clerk.

The Clerk: Yes.

The Court: Exhibit AA received in evidence.

(The document referred to was received in evidence and marked as Defendant's Exhibit AA.)

Mr. Graham: I wish to direct your particular attention, your Honor, to the first paragraph which doesn't have a number at the top of page 33; to the paragraph marked 1, also on page 33.

The Court: All right. Let me look at it.

All right.

Mr. Graham: Do you have reference to paragraph marked 1 on page 33?

The Court: Right. [533]

Mr. Graham: And to the paragraph marked 3 on page 34?

The Court: Yes.

Mr. Graham: That is all in that particular agreement.

The Court: Go ahead.

Mr. Graham: The next agreement appears on pages 49 to 55 of the further interrogatories between Charm Slide Fastener and Lange, Max Lange and Slidelock Corporation.

The Court: It runs from pages 49 to 55?

Mr. Graham: Pages 49 to 55.

The Court: It will be Exhibit AB received in evidence.

(The document referred to was received in evidence and marked as Defendant's Exhibit AB.)

Mr. Graham: I wish to direct your particular attention, your Honor, to the last Whereas clause on page 49, and the first Whereas clause on page 50.

The Court: Who is the second party here?

Mr. Graham: The second party is Lange and Slidelock.

The Court: What on page 50?

Mr. Graham: The first Whereas clause.

The Court: Yes?

Mr. Graham: Paragraph marked 3 on page 50.

The Court: There is no paragraph 3 on page 50. Page 51?

Mr. Graham: It is paragraph 3 of the agreement.

I may not have copied it correctly. I don't happen to have a copy of that; I used the court's copy. [534]

The Court: It is paragraph Third on page 51.

Mr. Graham: And also paragraph Fourth on page 51.

The Court: Yes.

Mr. Graham: Do you have the reference to paragraph Fourth?

The Court: Yes.

Mr. Graham: That is all as far as that agreement is concerned.

Your Honor, in the pretrial stipulation it was agreed by the plaintiff that certain other agreements would be produced at the trial. Those agreements have been shown to me over the week-end, and I would like now to have them back from plaintiff's counsel so that I may offer them in evidence.

Mr. Leonard Lyon: I think if you will identify them as you go along, we will produce them.

Mr. Graham: The first agreement that I have in mind is with the Universal Fastener Corporation. I don't have the exact title.

Mr. Leonard Lyon: I hand a copy of the agree-

ment between Talon and Universal of May 22, 1945, to counsel.

The Court: What is the date of the agreement?

Mr. Graham: May 22, 1945.

The Court: Between Talon and Universal?

Mr. Graham: Between Talon and Universal Slide Fastener Company, Inc. [535]

The Court: Do you offer it in evidence?

Mr. Graham: I do offer it in evidence, your Honor.

The Court: Received in evidence as Exhibit AC.

(The document referred to was received in evidence and marked as Defendant's Exhibit AC.)

Mr. Leonard Lyon: There are no copies of these agreements that we are in the process of producing, and I would like to have it understood that we can withdraw them and have copies made, a copy for you and a copy for ourselves, and then the exhibit returned to the clerk.

The Court: It may be withdrawn upon the substitution of a photostatic copy, or a typed copy if approved by counsel.

My thought was this—that a photostatic copy won't need any approval, but if you substitute a typed copy, get an okay on it.

Mr. Charles Lyon: The practical problem is, may we withdraw them at the close of trial today so we can make the photostat?

The Court: They may be withdrawn, also, from the clerk into custody of counsel for the purpose of making copies.

Mr. Graham: I wish to draw your particular attention, your Honor, to paragraphs 3, 4, and 5 of that agreement.

The Court: Is this agreement still in force and effect?

Mr. Leonard Lyon: Yes, your Honor.

The Court: Can that be a stipulation between counsel, my [536] statement to Mr. Lyon?

Mr. Lyon: Yes, your Honor.

Mr. Graham: I agree.

RALPH E. MEECH

the witness on the stand at the time of adjournment, having been heretofore duly sworn, was examined and testified further as follows:

Mr. Leonard Lyon: That is correct, isn't it, Mr. Meech, the Universal agreement is still in effect?

The Witness: It is if the patents that they are licensed under are still alive.

Mr. Leonard Lyon: Maybe I gave the wrong answer. I will have to look at the agreement and see the dates of the patents and see if they have expired.

The Court: It is obvious from the face of the document that some of them are in existence, because the Universal patents were applied for in '42 and '43.

Mr. Leonard Lyon: But the covenants running under the plaintiff's patents would terminate, I suppose, I haven't read this agreement with that in mind, would terminate when those patents terminated.

(Testimony of Ralph E. Meech.)

The Court: As to a particular patent?

Mr. Leonard Lyon: Yes, as to each patent.

The Witness: There was one patent, your Honor, that is [537] still alive and that will expire in '56.

The Court: Which one is that?

The Witness: Poux patent 2,169,176.

The Court: That is a different Poux than we have been talking about?

The Witness: That is correct.

The Court: A different Poux patent than we have been talking about?

The Witness: Yes.

The Court: We have been talking about '017.

The Witness: Yes.

The Court: All right.

Cross Examination—(Resumed)

Q. (By Mr. Graham): With respect to the Universal agreement which has been admitted in evidence as Defendant's Exhibit AC, Mr. Meech, do you recall whether any royalties have been received by Talon under the terms of that agreement?

A. No, we have received no royalties.

Q. Received no royalties?

A. That is correct.

Q. Have you received pursuant to the terms of that agreement any certificates from year to year certifying as to the number of free sales made by Universal? [538]

A. Yes, that information is interchanged.

Q. You have got reports regularly?

(Testimony of Ralph E. Meech.)

A. That is correct.

Q. Right up to date?

A. As far as I know.

Q. Up to 1954, in any event?

A. As far as I know.

Q. Universal is now known as Serval, is that correct?

A. That is correct.

Q. And Serval is one of the larger manufacturers in the zipper business, is that correct?

A. I would say that they are one of the leaders, yes.

Q. Would you know their approximate position in the zipper industry?

A. I would have no idea. It would be purely a guess if I attempted to answer it.

Q. Somewhere down the line after Talon and Conmar?

Mr. Leonard Lyon: If your Honor please, I object to the indefiniteness of this line of examination. As I understand it, and I may not, there are about 300 zipper manufacturers in the United States, and a guess as to their order of magnitude couldn't be very helpful to the court.

The Court: Well, that is true, except that I would imagine Mr. Meech would have some general information as to the relative size of these companies. He is an official of the company. [539] I imagine he knows what is going on, as well as watching patents cross his desk.

If you don't know, say so, but a guess doesn't help us any. Are they in the first 10, do you know?

(Testimony of Ralph E. Meech.)

The Witness: I would say they are, your Honor.

The Court: The first five?

The Witness: That is pretty close to the dividing line, your Honor.

The Court: Go ahead.

Mr. Graham: The next agreement, Mr. Lyon, which I should like to offer in evidence is the agreement with Strauss.

Mr. Leonard Lyon: I hand to counsel a copy of the agreement dated August 9, 1945, between Talon and Strauss Fasteners, Inc.

The Court: Do you offer it in evidence?

Mr. Graham: I do, your Honor.

The Court: It will be marked as Exhibit AD and received in evidence.

(The document referred to was received in evidence and marked as Defendant's Exhibit AD.)

Mr. Leonard Lyon: If your Honor please, may I look at that agreement, please?

(Document handed to counsel.)

Mr. Leonard Lyon: This agreement does not appear to relate to either of the two patents in suit. I understand it has [540] long since terminated, and I don't know how far we should go into old agreements that are no longer in effect. As I understand it, they can have no effect in this proceeding.

Here is an agreement made in 1945. Is it still in effect, Mr. Meech?

The Witness: No, sir.

(Testimony of Ralph E. Meech.)

Mr. Leonard Lyon: How did it terminate?

The Witness: Strauss Fasteners, Inc., sold their assets to Siegel Lock. Naturally the license went along with the machines and equipment. About five years ago Siegel Lock discontinued the fastener business and their machines were sold on the open market. [541]

Mr. Leonard Lyon: To whom?

The Witness: On the open market.

Mr. Leonard Lyon: And the license did not continue?

The Witness: That is right.

Mr. Leonard Lyon: I raise the question, your Honor, as to the scope of this proceeding as to whether we should encumber the record with licenses of this kind.

If there is any materiality that can be shown to this license, why, I will withdraw my objection, but——

The Court: If you have any point in connection with the antitrust laws don't you have it on the basis of other agreements apart from this?

Mr. Graham: Well, your Honor, I believe that all of these agreements bear upon the intent of the plaintiff and show a pattern of restrictive licenses.

The Court: Well, I think it is true that whatever that intent is, that agreements made at various times, even agreements covering patents would show the intent if there was an intent, but assume that is true, that these are points that you have

(Testimony of Ralph E. Meech.)

brought out by your other agreements without bringing in every possible agreement.

Mr. Graham: Well, if there should be any doubt about our version of the plaintiff's intent and pattern I feel that we should support it with a series of agreements that were made all at about the same time. [542]

The Court: What is the significance of this agreement?

Mr. Graham: I have some questions to ask the witness.

The Court: All right.

Q. (By Mr. Graham): Mr. Meech, I call your attention to paragraph 2(b)——

The Witness: May I have the exhibit, please?

(Document handed to the witness.)

Q. (By Mr. Graham): Paragraph 2(b) of the Strauss agreement. A. Yes.

Q. Now, as I read that paragraph it is the grant of a royalty-free license by Talon to Strauss under a Firing patent and application, both of which belonged to Strauss from the contention of the agreement.

The Court: I looked it over and it says "A grant of license, Talon to Strauss on the Strauss patents insofar as those patents have any of the elements of Talon patents." Isn't that the gist of it?

Mr. Graham: Yes. I wanted to find out from Mr. Meech if he recalls the purpose of that clause.

The Witness: I don't know the purpose of it. In what manner do you mean?

(Testimony of Ralph E. Meech.)

Q. (By Mr. Graham): I just wondered why a clause of that kind was put in which is a little bit incongruous in that it grants a license by Talon on a patent and application [543] which Talon doesn't own.

Mr. Leonard Lyon: I don't think that is a correct statement of the clause.

The Witness: I don't interpret it that way.

Q. (By Mr. Graham): You don't recall what the purpose of the clause was?

A. Well, it was to give Strauss or Talon a license, that is the purpose of it, under the Firing patents and application.

Mr. Graham: I think we will pass that. I would like to offer it in evidence.

The Court: It is in evidence already.

Mr. Graham: Mr. Lyon, I would like to have the agreement between Talon and Marvel dated May 7, 1948.

Mr. Leonard Lyon: I hand counsel a copy of the agreement dated May 7, 1948 between Talon, Inc. and Marvel Slide Fastener Corporation.

The Court: Are you offering this in evidence?

Mr. Graham: I do offer this in evidence, your Honor.

The Court: It will be marked Exhibit AE and received in evidence.

(The document referred to, marked Defendant's Exhibit AE, was received in evidence.)

Q. (By Mr. Graham): I call your attention, your Honor, to paragraphs 3, 4 and 5. [544]

(Testimony of Ralph E. Meech.)

Mr. Leonard Lyon: May I look at it?

Mr. Graham: The court has it.

The Court: Is this an agreement still in effect as to some patents?

The Witness: Yes, sir.

The Court: And it follows the same pattern, does it not, counsel?

Mr. Graham: Yes.

Q. (By Mr. Graham): Have any royalties been received by Talon under that agreement?

A. No, they have not. I might add that this company is temporarily inactive.

Q. How long has that condition existed?

A. I would say within the last year or two.

Q. But until then they had been active?

A. So far as I know.

Mr. Graham: Mr. Lyon, I would like to have an agreement between Talon and Hared Manufacturing Company, dated October 29, 1946.

The Court: We will take a short recess and during the recess counsel will select the ones that you want. The next series will be AF. You will have them ready for marking and by that we will save time.

Mr. Graham: Yes.

(Short recess.) [545]

The Court: Proceed.

Mr. Graham: I wish to offer in evidence, your Honor, as Defendant's Exhibit AF, agreement dated October 29, 1946, between Talon and Max Herman, Harold Herman, Edward Herman, and

(Testimony of Ralph E. Meech.)

Jenny Herman, doing business under the name and style of Hared Fastener Company.

The Court: Received in evidence as Exhibit AF.

(The document referred to was received in evidence and marked as Defendant's Exhibit AF.)

Mr. Graham: I also wish to offer in evidence as Defendant's Exhibit AG, agreement dated June 1, 1945, between Talon, Inc., Rex Slide Fastener Corporation, and Abe Ernst, doing business under the name and style of Ernst Slide Fastener.

The Court: Received in evidence as Exhibit AG.

(The document referred to was received in evidence and marked as Defendant's Exhibit AG.)

Mr. Leonard Lyon: I am not by my silence intending to indicate whether these agreements are in effect, your Honor. I don't like to interrupt, but it would be helpful if the record showed which of these agreements is in effect and which are not.

The Court: As to AF, the Hared agreement, do you know whether it is still in effect?

The Witness: The Hared Fastener Company was sold, to whom I do not know, but it was to one of our competitors, I [546] believe it was Conmar, or Conmar's interests.

The Court: When?

The Witness: Within the past two years, your Honor.

Mr. Leonard Lyon: Did the purchaser assume the Hared license agreement, its performance?

(Testimony of Ralph E. Meech.)

The Witness: Well, Conmar does not need a license under that, because they have a license under the patents anyway.

Mr. Leonard Lyon: Then this particular agreement to Hared did not pass into Conmar's hands so as to bind Conmar as to performance?

The Witness: That is correct.

The Court: What about the Rex agreement, Exhibit AG?

The Witness: The agreement with Rex and Ernst was superseded by a later agreement, and that is no longer in effect.

The Court: The later one is no longer in effect?

The Witness: The one that is in evidence.

The Court: Do you know the date of the later agreement?

The Witness: It was seven or eight years ago, as I recall.

Mr. Graham: May I ask if the plaintiff has a copy of the later agreement?

Mr. Leonard Lyon: Have we got a copy?

The Witness: We do not have a copy here in Los Angeles.

Mr. Leonard Lyon: If you want it, we will send for it.

Mr. Graham: If it involves the Poux or the Silberman patent, I do want it.

The Witness: It involves the Poux patent, but it is merely a cross-license, free of royalty or any kind of restrictions.

Mr. Leonard Lyon: No quotas?

(Testimony of Ralph E. Meech.)

The Witness: No quotas.

Mr. Leonard Lyon: We will have that agreement here, your Honor, as soon as we can get it here.

The Court: All right. Go ahead.

Mr. Graham: I also wish to offer into evidence as Defendant's Exhibit AH, agreement dated June 1, 1934, executed May 17, 1934, between Hookless Fastener Company, the American Fastener Company, and the Sterling Novelty Manufacturing Company.

Mr. Leonard Lyon: That agreement was made in 1934, doesn't relate to any of the patents in suit, and I believe that by its terms it expired at the end of 10 years from 1934, and the agreement was never in effect at any time that the defendant was operating. I can't see how it could affect any issue in this case.

The Court: Well, at best it could show an intention to do something or not to do something in 1934, and thereafter during the life of the agreement. That is pretty remote. It might conceivably assist, but it seems to me that unless you have got something that you can rely upon in these agreements [548] that come clearly within the statute of limitations, you are not going to help yourself by these old ones.

Mr. Graham: If your Honor please, there was attached to that agreement, when I saw it, a letter which indicates that royalties on the agreement had been paid through 1947 or '48. [549]

(Testimony of Ralph E. Meech.)

Mr. Leonard Lyon: I think I have the letter. It is an unsigned copy. At least it is a typewritten copy. I presume it is the correct letter. You might identify the letter. What is the date of it?

Mr. Graham: The letter is dated June 9, 1950.

Mr. Leonard Lyon: And it is referring to the fact that somebody sent some royalties by mistake. You might read the letter to the court. I think it is short.

The Court: Let me see the letter.

(Document handed to the court.)

The Court: Is this part of this file?

Mr. Leonard Lyon: Yes, your Honor. It was annexed to this copy. I don't know that it was originally in the file but I assume it was.

The Court: It was annexed to the copy of the contract which is now Exhibit AH for identification.

Mr. Leonard Lyon: And also there was annexed another letter signed by American Fastener Company—addressed to the American Fastener Company by Talon which I think should be identified.

Mr. Graham: This is a copy of a letter from Talon directed to American Fastener Company and Sterling Novelty Company dated July 7, 1938, which refers to modifications of the original agreement.

The Court: All right. Exhibit AH received in evidence. [550]

The letter of 6/9/50, a copy of it which apparently, according to the statement of counsel, was

(Testimony of Ralph E. Meech.)

attached to the contract Exhibit AH and fastened to it, apparently is a record of the Talon Company, which will be marked AH-1 and received in evidence.

(The documents referred to were received in evidence and marked Defendant's Exhibits AH and AH-1.)

The Court: The copy of the letter to American Fastener Company dated July 7, 1938, from Talon, with an acceptance by the American Fastener Company on the bottom, apparently being a copy relating to the same subject matter—I take it this is also a record of the Talon Company.

Mr. Leonard Lyon: That was also annexed to the copy of the contract which was produced from the files here.

The Court: It will be received in evidence as Exhibit AH-2 so we will have them all together.

(The document referred to was received in evidence and marked as Defendant's Exhibit AH-2.)

Mr. Graham: Now, if your Honor please, I wish to direct your attention to special paragraphs in that agreement.

The Court: What are the paragraphs?

Mr. Graham: 2, 3, 4, 6, 7, and 8, and there are schedules attached, schedules 1 and 2, and a price list which does not seem to have any special designation but is referred to in the agreement. [551]

The Court: This is very remote. Assuming that there are some things in here that you might think

(Testimony of Ralph E. Meech.)

you could avail yourselves of, unless you can tie in that same practice or a similar practice carried down for a period of time that you are concerned with, you wouldn't have anything. I haven't read it.

The corporation might easily engage in a conduct that would be clearly unlawful and abandon it. Let me look this over.

Mr. Leonard Lyon: I also might call your Honor's attention to the fact that in 1933 when this agreement or these agreements were made, the plaintiff owned patents on the zippers themselves as evidenced by the one that Judge Yankwich sustained in this court.

Those were licensed under those patents whereas here we are dealing with patents on methods and machinery for making zippers and the plaintiff's rights under their patents.

The scope of their licensing was an entirely different status then than it is now.

I don't think it has been established whether there has been any performance under this particular agreement since 1945, the date of the letter Exhibit AH-1.

The Court: You may inquire of the witness.

Mr. Leonard Lyon: What is the fact as to that, Mr. Meech? [552]

The Witness: To the best of my knowledge, there has been no activity by the licensee at least since the war.

I believe there was a \$100 annual payment that we did collect, maybe wrongfully, but that was for

(Testimony of Ralph E. Meech.)

a license under the Pinlock patent and if it was paid, it was paid for that reason. At present they are not active.

Mr. Leonard Lyon: When was that last payment made?

The Witness: Oh, some years ago.

Mr. Leonard Lyon: How long ago?

The Witness: Oh, about, I would say, six or seven years ago, as I recall.

Mr. Leonard Lyon: Has there been any performance or any payments made under that agreement since that time.

The Witness: No, sir.

Mr. Leonard Lyon: To your knowledge?

The Witness: No, sir.

Q. (By Mr. Graham): Mr. Meech, were any reports made by American or Sterling as to their production of slide fasteners?

Mr. Leonard Lyon: From the date of the agreement to the date of its termination.

The Witness: There may have been in the early days of the agreement, but I have seen none since I have been with the company. [553]

Q. (By Mr. Graham): There weren't any in the last few years? A. That is correct.

The Court: Well, of course the contract is probably an illegal contract in that any agreement—assuming of course interstate commerce and impact on interstate commerce—any agreement that divides a market or fixes prices is per se a violation of the antitrust laws. However, the agreement is

(Testimony of Ralph E. Meech.)

made in '33, '34, and only ran for 10 years, although inadvertently royalties were paid in '45 and '46. It is conceded it doesn't involve any of the patents here in suit, is it not, Mr. Graham?

Mr. Graham: That is correct.

The Court: I don't see that any harm is done in letting it in. I get the impression—I will say for the record—that apparently this company has been learning and growing up a little bit as far as its contracts are concerned. You start out with this exhibit, and then the later ones we don't find any more price fixing or dividing markets, but there are quota arrangements, and then finally we get into an era where there isn't even quota fixing, just cross-licensing.

Those are the inferences that I would draw. Does anyone find any complaint with that?

Mr. Leonard Lyon: I might say, your Honor——

Mr. Graham: I don't know whether you want it on the [554] record, your Honor, but my feeling is that they have just learned new ways of controlling the trade.

Mr. Leonard Lyon: In 1927, the Supreme Court, Chief Justice Taft, ruled in *U. S. vs. General Electric Company*, that a patentee fixing prices of his own volition under his own patent, not by any pooling arrangement or agreement with anybody else, but establishing prices, could legally do so, the price of his manufacturing licensee, not the retail price, or the sub-price, but the original manufacturer's price, he could set it; and as far as I

(Testimony of Ralph E. Meech.)

know that is still the law, although the Department of Justice has been trying to get that case overruled for a great many years.

The Court: Well, of course the contract has to be considered, also, in the light of changing law from year to year, and there has been a lot of development in the antitrust law in the period of time.

Mr. Leonard Lyon: I don't think a man's intent, what he did in 1933, with respect to the anti-trust laws, would be subject to quite the same test as it was in 1953. I think people had different ideas of antitrust laws then than they have now.

The Court: All those factors have to be taken into account. But for the use of showing the company's intent and concept of what it thought was proper in 1934, is there any reason why this shouldn't be considered? This is '55 now. [555]

Mr. Leonard Lyon: I don't think so. It seems to me the fact that they didn't do it any more in 1945, under the different patent status, establishes an intent in our favor, rather than against us.

The Court: I will say very frankly, if I am going to make any finding on antitrust laws, it is going to have to be made on something a lot more current than Exhibit AH.

Mr. Graham: I understand that.

The Court: AH standing alone wouldn't do a thing. If you have got something else, maybe this fills in some gap and shows some changing plan.

For what it is worth, it is in evidence.

(Testimony of Ralph E. Meech.)

(The document referred to was received in evidence and marked as Defendant's Exhibit AH.)

Mr. Graham: I believe that it shows a plan right from the start to restrain competition. The form of the plan changed with the years, but the plan has always been the same.

Your Honor, I had another exhibit to offer, but the pattern of the agreement is almost identical with Defendant's Exhibit AH, so I will not burden the court with this additional exhibit.

Mr. Leonard Lyon: Well, that other agreement is not in effect and hasn't been in effect since before the war. I would like that to appear, seeing you made the statement. You are referring now to the U. S. Rubber agreement? [556]

Mr. Graham: I am, and that bears the notation—I don't know in whose handwriting—that it expires in 1950.

Mr. Leonard Lyon: Maybe you can tell us what the facts are about that agreement.

The Court: Of course, if you keep talking about it, we will eventually have the exhibit in evidence here.

Mr. Leonard Lyon: We will leave it out if you want to leave it out.

Mr. Graham: Leave it out.

If the witness can have a copy of Exhibit AF, I have a few questions that I would like to ask him.

Q. (By Mr. Graham): Mr. Meech, I believe

(Testimony of Ralph E. Meech.)

you have before you the Hared agreement dated October 29, 1946. A. That is correct.

Q. Do you recall whether or not you paid any visit to the plant of the Hared Company before that agreement was made?

A. Yes, I believe I did.

Q. And that visit was made because you felt that they were infringing some of Talon's patents?

A. Infringement was the question, but I don't know whether it was done at Mr. Hared's request—that is, Max Herman, rather, I should say—or on my own or our own volition.

Q. In any event, you did visit the plant?

A. That is correct. [557]

Q. And that plant is located where?

A. I believe on Allegheny Street in Philadelphia.

Q. Did you inspect the machines that Hared was operating at that time?

A. I don't recall whether I inspected the machines at that time, but I believe I did. [558]

Q. You believe you did?

A. I believe I did.

Q. And do you recall how many machines there were?

A. At that time? I don't recall how many machines Mr. Herman had.

Q. Do you recall what type of machines they were?

A. It was the, as I recall, the Conmar type machine—it preformed by rolling.

(Testimony of Ralph E. Meech.)

Q. Did you discuss with Mr. Herman the operation of the machine—where he had gotten the machines?

A. I don't believe that that was in discussion at that time.

Q. Didn't you have some interest in where the machines were manufactured?

A. Not particularly. I just observed that they were of the Conmar type and I didn't care who manufactured them.

Q. You didn't inspect any plate that you sometimes see on these machines?

A. No, I did not.

Q. Any plate that you sometimes see on these machines?

A. No, I did not.

Q. Showing who manufactured them?

A. No, I didn't.

Q. You didn't discuss that subject with Mr. Herman?

A. That is correct. [559]

Q. From your inspection of the machines you wouldn't say that they were the Silberman type machine, would you?

A. Not as we know the Silberman type machine, no.

Q. What were the differences between the machines that Hared had and the Silberman machine?

A. As I explained before, the Conmar type machine was merely an attaching machine which cut the scoops from preformed wire and attached them to the stringer tape.

(Testimony of Ralph E. Meech.)

Q. Was that the only difference, the fact that Hared operated on preformed strips?

A. I don't exactly understand what you mean by "the only difference."

Q. Well, carrying out the other operation necessary to produce the zipper chain was the only difference between the Hared machine and the Silberman machine the fact that Hared operated on a preformed strip?

A. Oh, no. There were other differences in the machine.

Q. Were they old machines?

A. Well, it has been so long ago since I saw them that I don't remember whether they were old or new.

The Court: What is the significance of what kind of machines were being operated by Hared?

Mr. Graham: You wish that statement from me, your Honor?

The Court: Yes.

Mr. Graham: One of the depositions that will [560] be introduced in evidence, the deposition of John Havekost, contains a statement made by Mr. Havekost that the machine which he designed—he said he designed a machine for Mr. Silberman and that with his drawings he had parts made to assemble the machine by the Southern Engineering and Metal Manufacturing Company in Florida; that those parts were shipped to the Hared Fastener Company in Philadelphia and that they were

(Testimony of Ralph E. Meech.)

assembled by the Hared Fastener Company from the Havekost drawings.

I was trying to find out whether Mr. Meech could add to that story or contradict it or whatever the truth is.

The Court: According to Havekost those machines then were Silberman machines?

Mr. Graham: They were Havekost machines. They were machines that he claimed not wholly to have invented but parts of which he said he did invent.

The Court: I understand the significance of the question. You may proceed.

Q. (By Mr. Graham): Mr. Meech, do you have a copy of the interrogatories filed—answers to interrogatories filed May 8, 1952?

A. Is that in answer to the first group of interrogatories or the second group?

Q. The first group.

A. Yes, I have. [561]

Q. I call your attention to page 48, which is a page in the agreement dated April 18, 1949 between Talon and David Silberman.

A. Page 48?

Q. Yes, page 48 in the answers to the interrogatories.

A. I must have the wrong set of answers.

The Court: That is right. Exhibits attached there and numbered right on through.

The Witness: Excuse me. I see. I thought you meant the interrogatories proper.

(Testimony of Ralph E. Meech.)

The Court: Which paragraph?

Mr. Graham: Paragraph 8, your Honor. I asked you to read paragraph 8, Mr. Meech.

The Witness: Yes.

Q. (By Mr. Graham): Do you recall why that clause was inserted in this agreement?

A. Well, it was done primarily for the purpose of protecting our interest in the event or I mean, when we bought the Silberman patent.

Q. Was it by any chance because you had heard about a claim that Mr. Havekost had made to being a co-inventor with Mr. Silberman?

A. Definitely not.

Q. Hadn't you heard that such a claim had been made from Mr. Max Lange of Slidelock? [562]

A. I did not.

Q. Now, Mr. Meech, you testified on Friday that—I believe you testified and you correct me if I am wrong, that Talon had hundreds of licenses, license agreements?

Mr. Leonard Lyon: I don't remember quite that.

Mr. Graham: The witness will know what he said.

The Witness: I don't believe I said hundreds.

Q. (By Mr. Graham): Well, do you have a great many license agreements?

A. What do you mean by "a great many"?

Q. 100. A. No.

Q. You don't have 100 license agreements?

A. I wouldn't say we had a hundred.

Q. 75? A. No.

(Testimony of Ralph E. Meech.)

Q. 50? A. No.

Q. Less than 50?

A. I would say it would be less than 50.

Mr. Leonard Lyon: So the matter won't be left hanging on a limb, will you state as nearly as you can how many licenses you have issued since 1945?

The Witness: That is difficult to determine when we consider all the license agreements that I have negotiated. [563]

Don't forget we have other licenses on other subject matters.

Mr. Leonard Lyon: I am talking about slide fastener machines or methods of manufacture.

The Witness: The reason I am stating this, Mr. Lyon, is that it would be difficult to break it down and divide it without having a list before me. But I would say in the neighborhood of about 30, 25 or 30.

Q. (By Mr. Graham): Talon has purchased other patents, isn't that so, besides the Silberman patent?

A. Yes. We have purchased other patents from time to time.

Q. And you purchased Poux '017?

A. We purchased the application when Poux came back with us in the capacity of an engineer.

Mr. Leonard Lyon: I think you should state more fully under what circumstances you acquired the Poux patent.

The Witness: The Poux patent, the application form, rather, was acquired from Noah Poux in

(Testimony of Ralph E. Meech.)

1936, I believe, when he came back with Talon, as one of the assets.

Q. (By Mr. Graham): And you have purchased other patents? A. That is correct.

Q. Do you have any estimate of how many you may have purchased? [564]

Mr. Leonard Lyon: Over what period of time?

Mr. Graham: Since 1940.

The Witness: Since 1940? A dozen would be the outside. Probably somewhere around six or ten.

Mr. Leonard Lyon: Are those confined—are those limited to zipper machines and method of manufacture or do they include other patents relating to zippers?

The Witness: They include other patents relating to zippers.

Q. (By Mr. Graham): If you recall in the agreements relating to the purchase of these other patents, was there a clause in those agreements similar to the clause contained in paragraph 8 of the 1949 Silberman agreement?

Mr. Leonard Lyon: I object to that. The agreements must be here, if the court please.

The Court: Sustained. [565]

Q. (By Mr. Graham): Mr. Meech, I call your attention to page 71 of 1952 interrogatories—I am sorry, that is page 72.

The Court: This is what? This is part of Exhibit S?

Mr. Graham: Just a moment, your Honor. I will check that.

(Testimony of Ralph E. Meech.)

The Court: It is part of Exhibit S.

Mr. Graham: That is it.

The Court: What is your question?

Q. (By Mr. Graham): There is listed there a suit in the United States District Court, Southern District of New York, Talon vs. Syncro Slide Fastener Corporation; at the time interrogatories were answered that suit was still pending. Do you know what happened to the action?

A. Yes, it has been dismissed. Syncro Slide Fastener Corporation is no longer in business.

Q. No longer in business?

A. That is correct.

Q. Do you know when they went out of business?

A. I would say four or five years ago.

Mr. Leonard Lyon: You say "dismissed"; was it dismissed with prejudice or without prejudice?

The Witness: Without prejudice.

Q. (By Mr. Graham): You say they went out of business about five years ago. This suit wasn't filed until May of 1949. [566]

A. I said four or five years ago. It was shortly after that.

Q. The suit was dismissed for lack of prosecution?

The Court: Was there an answer to that?

The Witness: Not exactly. Syncro was out of business, also.

Q. (By Mr. Graham): Well, that was the technical reason for it, for lack of prosecution?

(Testimony of Ralph E. Meech.)

A. I can't answer that.

Mr. Graham: If your Honor please, I believe I am through with the witness, but I do want to confer for just a minute or two with my colleague to see if he has something.

I have no further questions of this witness.

The Court: You may step down.

Mr. Leonard Lyon: I was just going ahead with an examination of the witness.

The Court: Go ahead. Pardon me. I told him to step down, Mr. Lyon.

The Witness: I didn't get down yet. [567]

Redirect Examination

Q. (By Mr. Leonard Lyon): Mr. Meech, in connection with Exhibit T and the winding up of the suit involving Closurette Corporation and the releases, you testified that Talon paid to Closurette something like \$2,000 to pay the counsel fees of Closurette in that case, is that right?

A. That is correct.

Q. Will you state to the court what circumstances moved Talon to make that payment?

A. Well, originally we thought we had filed suit against the right party, because there happened to be chain machines on the premises of Closurette. Later we found out that we had sued the wrong party, and that was the reason that we paid the fee.

Q. You found that the machines were where you thought they were, on the defendant's prem-

(Testimony of Ralph E. Meech.)

ises, but they did not belong to the defendant and were not operated by the defendant, is that correct?

A. That was his statement.

Q. And you couldn't prove otherwise?

A. That is correct.

Q. In connection with the various license agreements which have been received here in evidence, which embody royalty free quotas, and covenants that royalties will be [568] paid for production in excess of those quotas, other than the Conmar agreement, have any of the licensees ever reached the limit of their free quotas, according to the reports that they made to you?

A. No, they have not.

Q. In the case of the Conmar license, is it a fact that you did receive one report from Conmar showing that they had manufactured in excess of their royalty free quota?

A. That may have been so. Those reports do not come direct to me, and it is difficult to know exactly what happened from year to year. There may have been one year, but I am not quite sure. There was no royalty paid.

Q. Do you know what happened in that event?

A. I do not recall.

Q. You are satisfied that if Conmar's reports ever showed a production in excess of their free quota, that they were excused from paying the royalties on the excess, is that correct?

A. That is, correct.

(Testimony of Ralph E. Meech.)

Mr. Leonard Lyon: I think that is all, your Honor.

Mr. Graham: If your Honor please, I have just one question. [569]

Recross Examination

Q. (By Mr. Graham): Mr. Meech, during this same period that you state the licensees who had quotas provided for in their licenses never reported having exceeded the quotas, can you state whether during that same period that the production of Talon continued to increase and expand?

A. Some years it did and others it didn't.

Q. The overall average during that period?

A. Our volume of business has not increased materially. In fact, it has gone the other way since the few years right following the war.

Q. When you say your volume of business, do you mean production or sales directly by Talon?

A. That is correct.

Q. Isn't it a fact that Talon has some jobbers in various cities through whom sales are made, like the Donahue Company in New York?

A. Donahue is not a jobber; he is a distributor of package slide fasteners, and that company is not related to Talon.

Q. Doesn't Talon make zippers for them, slide fasteners for them? A. That is correct.

Q. When you say that your production or that your business [570] hasn't increased, are you including the sales made by the Donahue Company?

(Testimony of Ralph E. Meech.)

A. That is correct.

Q. An overall picture, Talon directly and Donahue Company, combined, business has not increased?

A. We will have to separate those.

Q. You go ahead and separate them.

A. The business of Donahue has increased, but the business of Talon has not. In other words, one offsets the other. That is, Talon to—when I say Talon, I mean their sales to the trade.

Q. You say Conmar was excused from paying any royalties on production in excess of the quota on one occasion that you recall?

A. I don't recall the incident, but our records show that.

Mr. Leonard Lyon: I think we have some correspondence on that that we failed to bring to court. I will bring it after lunch.

Mr. McCoy: We have it here.

Mr. Leonard Lyon: We found it, I think.

I have some further examination of the witness when you are through. [571]

Q. (By Mr. Graham): Mr. Meech, can you state why, if no payment over the quota was required from Conmar, what was the reason—what the reason was for imposing a quota in the first place?

A. I don't recall the incident at all.

Q. I am not asking you about the incident. I am asking you about the provision in the first Conmar agreement in which you imposed a quota. Why was

(Testimony of Ralph E. Meech.)

a quota imposed, if you were not going to require any payment if they exceeded their quota?

A. Well, we did require payment if they exceeded the quota.

Q. When this occasion arose, when they did exceed their quota, you state they were excused from payment.

A. I don't recall the incident and if they were excused, why I don't know.

Q. Well, perhaps Mr. Lyon will be able to clear that up. He says he has some correspondence here.

Mr. Leonard Lyon: I have here, if your Honor please, a statement from the secretary of the company by teletype showing by years the quota that was under the contract, that accrued royalties free to Conmar, their production that year as evidenced by their report and also the comparative production of Talon for that year in units. It states: "By mutual consent exchange of information to be used as a basis for determining next year's quota was discontinued at the end of 1950." [572]

That was a couple of years before the contract was changed.

The Court: Have you shown the wire to counsel?

Mr. Leonard Lyon: And if counsel will stipulate if I called the secretary of the company he would so testify in accordance with this teletype message, why, I will offer the message in evidence. If not, I will have to call the secretary from Pennsylvania.

We thought there was so much indefiniteness about this quota of Conmar that we asked the sec-

retary to send us what the official figures are. Of course, we can't use the message without a stipulation.

Mr. Graham: If Mr. Lyon will explain what each column means, what it refers to, I might be in better position, your Honor, to know whether I can stipulate to that.

The Court: We can take that up after recess. We will adjourn now until 2:00 o'clock.

(Whereupon, at 12:05 o'clock p.m., a recess was taken to 2:00 o'clock p.m. of the same day.) [573]

Tuesday, March 8, 1955, 2:00 P.M.

Mr. Leonard Lyon: At this time I present the teletype delivered to Mr. William C. McCoy through Mr. W. B. Jager under date of March 7, 1955, signed by Mr. F. C. Layng, secretary of plaintiff Talon, Inc., and if defendant will stipulate that if called as a witness Mr. Layng would testify as set forth in this telegram, I will ask that the telegram be copied into the record at this point as Mr. Layng's testimony.

Mr. Graham: If your Honor please, for the best interests of the defendant we do not believe that we can stipulate as requested by Mr. Lyon, because we are completely deprived of the right to cross examine.

There are a number of questions relating to the figures that we would like to ask about, and for that reason we do not feel that we can so stipulate.

The Court: That answers the question.

RALPH E. MEECH

the witness on the stand at the time of recess, having been heretofore duly sworn, was examined and testified further as follows:

Redirect Examination

Q. (By Mr. Leonard Lyon): At the present time, Mr. Meech, [574] approximately how many concerns are in business in this country operating machines for the manufacture of zipper chains?

A. I would say in the neighborhood of 50. It is difficult to ascertain the correct number for the reason that there are so many loft operators which have operations that you never learn about.

The Court: Well, the figure 50, then, are established concerns making zippers?

The Witness: That have chain machines, your Honor.

Q. (By Mr. Leonard Lyon): Has there been any significant change in the number of those concerns so operating within the last five years?

A. There may have been a small increase, but not material. [575]

The Court: You said having chain machines. I thought the question was how many firms were making zipper chains.

Mr. Leonard Lyon: That is the question I asked.

The Court: He said 50 and to my question he said something about having chain machines.

The Witness: That would be the same, your Honor. If they are making zipper chain they have to have chain machines.

(Testimony of Ralph E. Meech.)

The Court: You call a machine that makes zippers a chain machine?

The Witness: That is correct.

Q. (By Mr. Leonard Lyon): How many concerns at the present time do you estimate are making—are operating in this country manufacturing zippers?

The Court: Now, what do you mean by zippers? Do you mean as compared to zipper chains?

The Witness: I mean by a zipper, the two chains in combination with the slide.

The Court: By zipper chain you mean the single line of—just the half zipper fastened to the cloth?

The Witness: That is correct, your Honor.

The Court: All right.

The Witness: Will you read the question?

(Question read.)

The Witness: I think at this point, Mr. Lyon, that we should clarify in the interest of the court, just what we are talking about. [576]

In the business today, when I mentioned 50 manufacturers of zippers, those are people——

Q. (By Mr. Leonard Lyon): You said zipper chain.

A. Zipper chain, excuse me. They are making zipper chains. Some of them make a complete fastener—that is with a slider and bottom stops and top stops. Others sell the chain to the trade or to what we call assemblers.

Then there is the integrated manufacturer who

(Testimony of Ralph E. Meech.)

has his own slider-making equipment and makes all the component parts for the fastener.

They, of course, make their own chain and use their own chain in making a complete fastener.

Then there are component manufacturers in the industry who make nothing but sliders and top stops, separating bottom stops, which they sell to the trade—mostly to assemblers.

These assemblers are more or less what we call “bedroom operators” and they operate in their homes and their families are usually engaged in the business and it is reasonably cheap labor. And there is where the components in the sliders are sold to the assemblers, who buy components as well as the chain from people that make chains.

Now, of this group of 50 there are about a dozen or so that sell nothing but chains to the assemblers and do not make a complete zipper. [577]

Now, I hope I have clarified what happens in the zipper industry.

Q. (By Mr. Leonard Lyon): You haven’t yet told me how many concerns there are making completed zippers.

A. Completed zippers? We have to eliminate in this number the number that sell chain. Completed zippers—there would be possibly 250 or 300.

Q. Now, what actually does the plaintiff sell, manufacture and sell?

A. The plaintiff makes an integrated fastener and sells the complete fastener. He does not sell chain to assemblers. He sells chain to some of the

(Testimony of Ralph E. Meech.)

manufacturers who employ a particular method of using the chain, which is cheaper than buying the completed fastener.

He also makes specialty fasteners which some of our smaller competitors can't make and wouldn't make because there is no profit in it for him.

The Court: Then the plaintiff is in the category of the 250 or 300 firms you mentioned?

The Witness: That is correct, your Honor.

Q. (By Mr. Leonard Lyon): How many concerns at the present time are there that parallel plaintiff's business in the sense that they are what you call integrated manufacturers?

A. There would be in the neighborhood of 35.

Q. And has there been any significant change in that number in the last five years?

A. There has not.

Mr. Leonard Lyon: That is all, your Honor.

The Court: Do you have any further questions?

Mr. Graham: No, your Honor, I have no further questions.

The Court: Mr. Meech, what kind of machines does this company known as Waldes have?

The Witness: I haven't been in their plant but I am told they use an old—the old so-called Prentice machine.

The Court: Is that a preformed strip or what characterizes the Prentice machine?

The Witness: Oh, it is not a preformed strip. It is a flat strip and the elements are stamped out of the strip.

(Testimony of Ralph E. Meech.)

The Court: Stamped and fastened by the same machine?

The Witness: In the same machine.

Mr. Mockabee: What was that answer?

(Answer read.)

The Court: Is that one of the processes whereby there is waste metal left after stamping out the unit?

The Witness: No, there is no waste in the Prentice method. [579]

The Court: Is that based on a Prentice patent?

The Witness: I believe they have some patents, yes.

The Court: Have they been using these machines for some time?

The Witness: That I don't know, when they started to use that type of machine. They have been in business for some years. Their chief business is personal hardware.

The Court: Personal hardware—what is personal hardware?

The Witness: Cuff links and things like that.

The Court: If you know, how does it happen that Exhibit W, the contract with Waldes Kohinoor, Inc., of November 10, 1950, licensed Waldes for various of Talon's patents, but didn't include the Silberman patent?

The Witness: Waldes were not using the Silberman machine, to my knowledge.

The Court: It wasn't the intention, then, of

(Testimony of Ralph E. Meech.)

Talon to give Waldes the benefit of all patents which Talon had?

The Witness: No, it was not.

The Court: Do you know whether or not Waldes licensed Talon on all the patents which Waldes had?

The Witness: No, your Honor, they didn't license us on any great number of their patents in comparison to the total. They are primarily and have been in the past interested in making a covered zipper, what we call the cover zip. Those [580] patents of course are quite large in number and we were not interested in those patents, and they had others, of course, that we were not interested in.

The Court: With the exception of that kind of patent, do you know whether or not the agreement covered all other patents that involved zippers?

The Witness: It did not cover all other patents.

The Court: All right.

Mr. Graham: If your Honor please, may I ask one or two more questions along the same line?

Recross Examination

Q. (By Mr. Graham): Mr. Meech, I believe you stated that Waldes makes its zipper chains in accordance with the Prentice method?

A. As far as I know.

Q. Would you state to the court, then, how it happened that Waldes needed any license from Talon? Were they doing anything in violation of Talon's patents?

(Testimony of Ralph E. Meech.)

A. Yes. I believe at that time, or it may have come later, it was in settlement of interference proceedings, too, but in our opinion they needed a license.

Q. You told them you felt they needed a license? A. I believe so.

Q. And they agreed? [581]

A. That is correct.

Q. Do you remember what patent that was that was in interference?

A. Offhand I do not know. I believe it was on a heat sealing tape, which they had an application in interference with one of our applications.

Q. Is that patent referred to in this agreement? A. I believe it is.

Q. Was it the Carlile patent?

Mr. Leonard Lyon: Do you want the witness to look at the contract? He might be able to identify it.

Mr. Graham: Yes.

Mr. Leonard Lyon: Are you asking for the patent of Talon's that was in interference, or the patent—

Mr. Graham: The patent of Talon's that was in interference.

The Witness: I don't believe it is Carlile. This may have not come as a result of—there may be another agreement as to that, I can't recall. This agreement was of course the result of a suit filed. Possibly the other agreement was a separate agreement.

(Testimony of Ralph E. Meech.)

Q. (By Mr. Graham): Do you know whether Prentice makes so-called round head zippers as distinguished from a square head?

A. I believe they do. [582]

Q. When I said "head," I meant shoulder. I am sorry.

A. That's right.

Q. And is a round shouldered zipper covered by any of the Talon patents?

A. That is a pretty broad question. The method employed in making the round head, as you call it, it would have to employ the Poux method.

Q. In your opinion?

A. In my opinion. By round head, we call it a round leg or streamline. Is that what you refer to?

Q. Yes.

I think that is all, Mr. Meech.

Mr. Leonard Lyon: That is all, Mr. Meech.

The Court: Step down.

Mr. Graham: If your Honor please, I have a number of depositions here that I would like to offer in evidence and ask that they be considered part of the record of this trial.

The first is the deposition of Wilbur Jager, taken in Los Angeles on November 25, 1952.

The Court: All right. The next number, Mr. Clerk, is AI?

The Clerk: Yes, your Honor.

The Court: It will be marked Exhibit AI and received in evidence as part of the record in this case. [583]

(The document referred to was received in

evidence and marked as Defendant's Exhibit AI.)

The Clerk: Shall I unseal these as I go along?

The Court: Yes.

Mr. Graham: The next deposition is the deposition of C. F. Detweiler, taken in Los Angeles on November 25, 1952.

The Court: AJ received in evidence and made a part of the record in this case.

(The document referred to was received in evidence and marked as Defendant's Exhibit AJ.)

Mr. Graham: Next is the deposition of Robert Eisenberg taken at Los Angeles on November 25, 1952.

The Court: AK.

The Clerk: I don't think I have that one.

Mr. Graham: It was the same reporter in each case. Perhaps they all came in one envelope.

The Clerk: I don't have it listed. Do you want to assign a number to it?

The Court: We will assign the number AK to it.

(The document referred to was received in evidence, to be marked as Defendant's Exhibit AK.)

Mr. Graham: The next is the deposition of Isadore O. Napp, taken at Los Angeles on November 25, 1952.

Mr. Leonard Lyon: May I ask if these witnesses are out of the jurisdiction of the court? [584]

I assume they are, or counsel wouldn't be offering their depositions.

Mr. Graham: I cannot speak for the witnesses who are employees of Talon.

Mr. Leonard Lyon: Mr. Napp is an employee of Talon, is he?

Mr. Charles Lyon: No, he is not. And neither is Eisenberg.

Mr. Graham: Eisenberg is not.

Mr. Charles Lyon: And they are both residents of the city of Los Angeles.

Mr. Leonard Lyon: And they are both residents of the city of Los Angeles. So I object to the depositions.

I am willing to make a trade with counsel. If he will accept that telegram, without my calling the witness, why, he doesn't need to call these witnesses.

The Court: It is a good proposition, counsel. Mr. Lyon is a horse trader.

Mr. Graham: If I can't get any lower price, your Honor, I will accept the proposition.

The Court: Well, now, seriously, is it accepted or not?

Mr. Graham: It is accepted.

The Court: Then do you withdraw any objection to the depositions, Mr. Lyon?

Mr. Leonard Lyon: That is quite all right. And I would [585] like at the appropriate time to re-offer my telegram.

The Court: All right. We will take it in just a minute. The deposition of Isadore Napp will be marked AL and received in evidence.

(The document referred to was received in

evidence and marked as Defendant's Exhibit AL.)

The Court: Now let's take up your telegram.

Mr. Leonard Lyon: The teletype that I previously identified by the witness, I will hand to the court and ask that it be incorporated in the record as the testimony of Mr. F. C. Layng, the secretary of the plaintiff company.

The Court: All right. The stipulation you propose is that the reporters take this teletype which has been handed to me, addressed to W. B. Jager and copy it into the record, the stipulation being that if F. C. Layng were called and sworn as a witness he would identify in substance as set forth in the telegram?

Mr. Graham: I will consent to that, your Honor.

The Court: All right, let me read it. Hand it to the reporter, and it will be copied into the record as the testimony of Mr. Layng.

(The document referred to is in words and figures as follows):

"4 L M 3/7 114

W B Jager

This teletype is to be delivered to Mr. Wm. C. McCoy. Reference our agreement with Conmar, Dated January 1, 1940, following tabulation shows their sales quota and their actual sales, as well as Talon actual sales as determined under contract, by years— [587]

Conmar		Sales of Slide Fastener	
Sales Quota		Units as Determined	
as Stated		Under Contract	
Year in Contract		Conmar	Talon
000's Omitted			
1940	52,000	34,470	200,107
1941	64,500	56,910	272,955
1942	77,000	48,569	152,624
1943	89,500	25,149	68,316
1944	102,000	36,147	120,620
1945	102,000	34,892	135,673
1946	102,000	46,876	255,371
1947	102,000	70,471	250,982
1948	102,000	73,655	240,796
1949	102,000	81,731	240,306
1950	114,500	118,781	285,787

Please note, by mutual consent exchange of information to be used as basis for determining next year's quota was discontinued at end of 1950. Note also that contract provided that the conversion factor for finished fasteners shall be 12 inches, and in the instance of continuous chain 15 inches. Hence the calculations shown above reflect these conversion factors, per contract.

F. C. Layng'' [588]

Mr. Graham: I next offer the deposition of John T. Havekost, taken on November 27, 1954 in New York City.

Mr. Leonard Lyon: Your Honor, in connection with Mr. Havekost's deposition, the defendant in-

troduced an affidavit that was asserted to have been given some years previously by Mr. Havekost, not in the presence of any of the plaintiffs or any representative of the plaintiff and not as a part of this case, but in connection with another matter.

They attempted to offer that affidavit and have it identified and have Mr. Havekost testify to it.

Now, we made objections and we would like to have those objections passed upon and preserved.

We don't think that under any circumstances that affidavit is proper in this case. It is hearsay. It is not binding on this plaintiff and should not be used by Mr. Havekost at all.

One ground that was asserted for its being used was that it refreshed his recollection. But I don't understand that a man can make an affidavit years after an event and then come in and use it to refresh his recollection.

Mr. Graham: If your Honor please, the affidavit in question was not made at the time the deposition was taken. It was made at the time the facts referred to in the affidavit transpired.

Mr. Havekost identified it as a copy of an affidavit made [589] by him at that time; and there was some handwriting on it which was his handwriting and which he testified to as having been put on there at the time the affidavit was executed.

The original of the affidavit cannot be found. It was an affidavit given to Mr. Lange of the Slidelock Corporation who then employed Mr. Havekost.

The Court: Does the deposition lay some found-

ation showing that Mr. Havekost needed to have his recollection refreshed?

Mr. Graham: Yes, I believe it does, your Honor.

The Court: And did Mr. Havekost then subsequently testify in the deposition to the same substance that appears in the affidavit?

Mr. Graham: He did.

The Court: Well, the primary evidence is Havekost's testimony in the deposition and not the affidavit.

It would seem to me there would be no harm in identifying for the record the document on which he relied to refresh his recollection.

Mr. Graham: His testimony, your Honor, according to my memory referred to certain parts of the affidavit as having been true at the time they were put in affidavit form.

Mr. Leonard Lyon: I don't understand that the document——

The Court: The law on this is the difference between past memory refreshed and past memory recorded. [590]

Now, if this is past memory refreshed then the testimony of the witness is the testimony and not the affidavit.

If there is some attempt to use the document as past memory recorded, which apparently is claimed here, then the document itself might have a different status.

Mr. Leonard Lyon: I would like to read Mr. McCoy's objections which summarizes the situation as he saw it.

Mr. Graham: What page is that?

Mr. Leonard Lyon: Page 7.

"Objected to as self-serving statements so far as the matters appearing on the face of the document are concerned.

"No foundation has been laid for the material set forth in this document.

"It is further objected to because the witness is present and this written paper, Defendant's Exhibit 2, is not in support of any oral testimony given by the witness and is setting forth material that is very leading in character. And the witness has established no independent recollection of the statements in the document in this proceeding. And the data and date stated in the document is after the issuance of the patent in suit No. 2,437,793."

I think your Honor will be interested in considering our objections as you read the deposition because this is [591] an affidavit that a lawyer had this man make long after the purported events referred to in the affidavit and is not a part of this case. Also it was not in the presence of the plaintiff and the witness seeks to use that affidavit now to refresh his recollection or reconstruct his recollection, it is not clear which, and I don't believe, if it is to refresh his recollection, it is evidence of anything at all. It is just an aid to his testimony and I don't believe they laid any foundation for reconstructing his——

The Court: Let me see the deposition. I don't know what happened but the law on it is fairly clear.

If I called you up here as a witness, Mr. Lyon, and asked you about some event that happened 20 years ago and you had a file on it and you said, "Well, your Honor, I don't remember what happened. I have a file here. May I look at this file."

Now, I suppose if we are going to be technically correct about it you would then look over the file and if I were going to be technically correct I would probably have to ask you: "Now, do you have at this time any independent memory about this matter without looking at the file," and your answer was: "No, I just know a name in the file," so I say, "All right, look at the file."

You look at the file. Then I say to you: "Now, having looked at the file has your memory been refreshed" and you say "Yes." [592]

You lay the file aside and say "My memory has been refreshed" and you would proceed to testify.

On the other hand I suppose—not suppose but I am certain, we could have the document or the file that you looked at and have it marked for identification or get it before the court in some manner to see with what you refreshed your memory from and possibly cross examine you on it. That is what we talked about as past memory refreshed. And then if the witness testifies to maybe the same things that are in the file or here in the affidavit, it is the witness' testimony that counts and not the affidavit.

If on the other hand you look at the file and you come back and say, "Well, I still have no memory of it. It says here in the file" so and so, "but I have no independent recollection of it."

That is a different problem and I am not too sure what the answer is on that. It comes under the category of—could come under the category of past memory recorded.

Now, what you did here I don't know. I suppose if I read this deposition I could find out.

Mr. Leonard Lyon: The document was introduced on page 6. There was no foundation laid at all for either a lack of memory or an absence of memory.

On page 6, right out of a clear sky, they want to identify and show Mr. Havekost the statement of counsel's which appears [593] to be a copy of an affidavit and he says, "That refreshes my memory."

"Q. Do you recall having executed the original of that affidavit? "A. Yes.

"Q. Is it in your handwriting? "A. Yes.

"Q. Do you recall who you delivered the original of this document,"

which would have nothing to do with refreshing his recollection.

And then it is offered for identification and then——

The Court: It was only offered for identification.

Mr. Leonard Lyon: That is right.

The Court: Not offered in evidence. It was being marked as to what the witness looked at to refresh his recollection.

Mr. Leonard Lyon: Then as I understand it is not being offered in evidence with the deposition.

The Court: If that is all that happened at the deposition then it was never offered in evidence. It was marked—it says “offered” but all that happened was that it was marked for identification.

Was that your intention?

Mr. Graham: That is my intention.

Mr. Leonard Lyon: I don't mind it being marked for [594] identification as long as it is not offered in evidence.

We have been receiving these depositions, I thought, with the understanding that all the exhibits were being marked in evidence.

The Court: Are there exhibits to these other depositions?

Mr. Leonard Lyon: Yes, all of them—many of them have exhibits to them. [595]

Mr. Graham: I think the only one that has this is Havekost.

The Court: Let's re-mark those. I am talking now about these depositions AI to AL, inclusive, Jager, Detweiler, Eisenberg, or Napp.

Mr. Leonard Lyon: I don't think any of those have exhibits.

The Clerk: I don't see any in Napp; I don't see any in Detweiler; I don't see any in Jager.

Mr. Leonard Lyon: Then we come to the fact, if we follow up this theory that this was marked for identification only to show what it was the witness used to refresh his recollection, then we come to the objections to the testimony of the witness when he refers to that exhibit and reads from it, and so forth. As I understand a document that is used to

refresh your recollection, you just look at it and see it and then testify, but you can't use the document as primary evidence, and we come to those objections later on in the deposition.

The Court: We may have to sort those out in this deposition.

Mr. Leonard Lyon: I am perfectly willing that this matter should be received by the court, and the court rule on it. The only thing I want to be sure of is to call the court's attention to the depositions—to the objections, and that we are urging them.

The Court: Just advise me what happened here. Looking at the index in this deposition of John T. Havekost that we have been talking about, the index shows that there were three exhibits each marked for identification. No. 1 was a document dated December 8, 1948, a one-page document. Is that the affidavit that you are talking about?

Mr. Graham: No, your Honor. That is, I believe, the same document that is already in evidence. It is attached to the answers to the interrogatories filed on May 8, 1952.

Mr. Leonard Lyon: The document we are talking about is Exhibit 2.

The Court: Just a minute.

Mr. Graham: That document refers to a prior affidavit, your Honor.

The Court: This first one that is marked Exhibit 1 to the deposition, I haven't seen this in the interrogatories.

Mr. Charles Lyon: I think it is defendant's Ex-

hibit R, and Exhibit 1 to the Havekost deposition are supposed to be the same.

The Court: They are not. They are not at all. This Exhibit R talks about \$1500 paid by Silberman, and Exhibit 1 to the deposition is something between Lange and Havekost. The consideration is \$1.00. They are entirely different documents.

Mr. Graham: I am sorry, your Honor, I don't have copies [597] of those documents attached to my copy of the deposition.

Mr. Leonard Lyon: My copy of the deposition has no exhibits annexed to it.

The Court: Here, you can look at it. Let's clear up one thing before we go further, and that is that Exhibit 2 to the deposition is the affidavit about which you have been protesting, Mr. Lyon, is that correct?

Mr. Leonard Lyon: That is correct.

The Court: And Exhibit 3 to the deposition is a soft copy of the Silberman patent '793?

Mr. Leonard Lyon: That is correct.

The Court: I take it we don't need '793 in evidence again.

Mr. Graham: No.

The Court: And there will be no objection made to any references to Exhibit 3 in the deposition, is that right? There will be no objections to any references to Exhibit 3 in the deposition of Havekost, is that right?

Mr. Leonard Lyon: That is correct.

The Court: So we are only concerned then with

references in the depositions to exhibits 1 and 2 to the depositions.

The Clerk: Do you want to assign an identification number to this?

The Court: Yes, let's call the Havekost deposition AM, presently, for identification, and the three exhibits to the [598] deposition will be AM-1, which is Exhibit 1 to the deposition, and identified as being a copy of a purported affidavit by Havekost—no, it is not an affidavit—a statement, apparently an assignment by Havekost accepted by Max Lange in writing; Exhibit AM-2, to the deposition, is the copy of the purported affidavit of Havekost about which Mr. Lyon has been talking; AM-3, being Exhibit 3 to the deposition, is a soft copy of the Silberman patent '793. What do you suggest? That I read these and then flag some pages and take it up with you later?

Mr. Leonard Lyon: I think you can just take this matter with you. I don't think it has to be ruled on right now, your Honor.

The Court: All right.

I will look them over and talk to you later about it.

The Clerk: Your Honor, in connection with that deposition, it seems to be the practice of some notaries in New York to send souvenirs along. Do you want a stipulation in the record that it is no part of the deposition?

Mr. Graham: If your Honor please, Mr. Sansome is a very enterprising reporter who sends a gift with every deposition.

The Clerk: It is not part of the record then, your Honor?

The Court: It certainly is not part of the record. Let's go ahead.

Mr. Graham: I next offer in evidence the deposition of [599] William Wray, taken in New York City, New York, on February 25, 1955.

The Court: What date?

Mr. Graham: February 25, 1955.

The Clerk: That also has a souvenir in it. Is that a souvenir, counsel?

Mr. Graham: That is a souvenir.

The Court: It will be Exhibit AN in evidence.

(The document referred to was received in evidence and marked as Defendant's Exhibit AN.)

I will assume that there are no exhibits attached to these depositions, unless you call them to my attention.

The Clerk: I will check it, your Honor, and see.

There doesn't appear to be any exhibits in here.

Mr. Graham: If your Honor please, the next witness will be Mr. Lipson, who just stepped outside for a moment. He will be back presently.

The Court: Have you completed your offer of depositions?

Mr. Graham: I believe the Loew deposition has been offered in evidence.

The Court: Have you completed your depositions?

Mr. Graham: I have completed my depositions.

The Clerk: Except we haven't located the Eisenberg deposition yet, your Honor.

Mr. Lyon: We have a copy of it you can use if you can't [600] find the original. I will stipulate with counsel that you can substitute this copy. Is that all right?

Mr. Graham: Thank you very much, Mr. Lyon.

The Court: How much longer will you be, Mr. Graham?

Mr. Graham: Mr. Lipson's testimony will be extended, I am afraid, your Honor. I think it will take all day tomorrow, anyway, and the balance of today.

The Court: Is that your last witness?

Mr. Mockabee: As far as we know at the present time.

Mr. Graham: As far as we know at the present time, it is.

The Court: All right. Let's go ahead.

PHILIP LIPSON

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Philip Lipson.

Direct Examination

Q. (By Mr. Mockabee): Mr. Lipson, will you state your age and occupation?

A. I am 56 years old. I am a mechanical—I am a manufacturer in the mechanical field.

(Testimony of Philip Lipson.)

Q. Could you speak a little louder, please?

A. Okay.

Q. Specifically in what field? [601]

A. At the present time I manufacture zippers.

Q. What is the name of your company?

A. Union Slide Fastener, Inc.

Q. Is that located in Los Angeles?

A. Yes.

Q. Could you give me a brief history of your mechanical training and experience?

A. Yes. I graduated at Trade High School in Warsaw, Poland, in 1914, in June 1914. I went to work as a mechanic in a factory which manufactured various types of machine tools, including punch presses. I worked there until the German invasion of Warsaw in August 1915. In December 1915 I went to Stettin, Germany.

Q. Just a minute. In this first employment with regard to the manufacture of the punch presses, what type of duties did you have?

A. At that time I worked on planer, shaper, milling machine, and lathe.

Q. In other words, you operated those machines? A. That's right.

Q. Proceed with your explanation of your experience.

A. In the early part of December 1915 I went to Stettin, Germany, where I worked in an automobile factory for 12 months.

Q. What were your duties there?

A. I was—in Germany they call it a schlosser,

(Testimony of Philip Lipson.)

which [602] in English means a mechanic. In Germany the broad term of schlosser takes in machinist and mechanic and all kinds of things. The literal translation is locksmith.

Q. Did you operate machinery there?

A. No. I was a bench worker.

Q. Doing what?

A. I specialized on front axles of automobiles.

Q. Proceed.

A. In January 1917 I went from Stettin to Berlin, Germany, where I worked in various factories as a toolmaker. I also attended evening courses for engineering in Berlin.

Q. Was that a school of advanced education?

A. Yes. Well, it is a school of mechanical engineering. In the spring of 1919 I went back from Germany, I returned to Warsaw, Poland, and I found employment in the same factory where I worked before I left for Germany.

Q. You mean the factory where you worked in connection with the punch presses?

A. That's right. This time I was engaged as assistant designer and assistant engineer in the designing and experimentation with new punch presses of various types.

Q. What further mechanical experience have you had?

A. After I arrived in the United States, I worked for the Ford Motor Company in Detroit, Michigan.

(Testimony of Philip Lipson.)

Q. How long did you work in that plant? [603]

A. Two and a half years.

Q. What were your duties in Ford Motor Company?

A. The first year and a half I worked at semi-skilled jobs on the production line, because I did not speak English or couldn't read blueprints in English. After that I was transferred to the tool room, where I worked on gauges, new and repair of gauges, new ones and repair.

Q. In the repair of the gauges, would you or would you not consider this precision work?

A. Yes.

Q. Proceed with your experience.

A. Then there was an interval of 25 years where I was not engaged in the mechanical field. I was engaged in business, in retail business.

Q. What happened after that period?

A. After that period I came to Los Angeles, I met Mr. Loew, and I became associated with him in June 1947 in the manufacture of zippers.

Q. What prompted you to get into the business of manufacturing zippers?

A. I saw in that a chance to return to the mechanical field, which was my first love. I did not like the retail business, and I looked for a chance to get into the mechanical field, and after an absence of 25 years I didn't have enough self-confidence to go into it by myself. Therefore, when this opportunity presented itself to get in with a man who had experience [604], and had been in it for a long time,

(Testimony of Philip Lipson.)

I took that chance and went back into the zipper business.

Q. Getting back to this period in which you were in the retail trade, did you in any way keep in touch with mechanical development? A. Yes.

Q. How?

A. I have read many books and studied up on development in the automobile industry in Detroit. I was trying to develop something new in the automobile industry, and did not succeed because of the lack of money. [605]

Q. You say you were trying to develop something new. Were there any other occasions when you attempted or did develop something new?

A. Oh, yes. While I was in Germany I invented a certain jig which was later used by them.

Of course at the time I did that I was 18, close to 19 years old. I didn't know just what was implicated to me. It was just a chance of solving a problem and I did that.

Q. Was that jig adopted and used by your employer?

A. That is right. I was put in charge of building those jigs.

It was for a large tool firm in Weisensee—a suburb of Berlin.

The name of the factory was Riebe Kugellager and Werkzeugmacherei.

Q. Did you develop or were you interested in developing any other innovations along mechanical lines?

(Testimony of Philip Lipson.)

A. Yes. While I worked on my return to Warsaw, while I worked for this factory we developed various punch presses.

The punch presses we were developing were of a much smaller size than those used for that purpose in the industry.

For instance, we developed punch presses for punching out pharmaceutical pills.

I designed one or, rather, assisted in the designing of a punch press with a horizontally revolving dial for the [606] stamping out of saccharin pills. And in that connection there were many difficulties between the time when you design a machine and when you build it. In the shops it is usually called "taking the bugs out of it."

And in that connection I have improvised and developed certain types of cams that I had never seen before.

They might have been in use in some other factories but we needed them and we needed something that would perform that type of operation and it wasn't known to the two engineers who were the owners of the factory.

I had designed those.

There were many other innovations that had to do with labor-saving methods. For instance, when you attach certain cast iron bearings to a certain press. Now, I showed a new method of making those and attaching them. Where it used to take a man four hours to attach those to one machine I had as a sort of a task by my two bosses, attached

(Testimony of Philip Lipson.)

four of them in three hours against the one in four hours by merely putting a little new system of attaching them.

Q. When you in your various occupations involving machines and machine tools, and in working out these various improvements and innovations that you have testified to, I gather that it was a custom or hobby or what prompted you to make these improvements?

A. (No answer.) [607]

Q. In other words did you accept the equipment that you were assigned to work upon as the machine which did the work in the best manner possible—what was the reason for these innovations?

A. I had always been interested in problems. I play chess for instance and you have there any new problem or combinations that interests me. In making these innovations it wasn't a question of money. I had never asked for money for them. The problem intrigued me and I used to often go home and solve this problem at home, bring it back to the shop and show it.

It was, you might say, a matter of pride and a matter of accomplishing a job.

Q. In other words you had a genuine interest in the tools and machines that you worked on and tried to improve them as you could?

A. That is right.

Q. When you came to California and met Mr. Loew, what type of business was he engaged in?

(Testimony of Philip Lipson.)

A. He was engaged in the business of manufacturing zippers.

Q. He had his own plant? A. Yes.

Q. Did you examine the equipment that he had before you went into business with him? [608]

A. Only once. I visited the shop and I didn't examine the equipment because I didn't know anything about zippers at that time.

Q. When did you first acquire any knowledge of the equipment in the shop?

A. After I became associated and worked in the shop. That was on June 10, 1947.

Q. In your association with Mr. Loew who was supposed to supervise the operation of the shop?

A. Mr. Loew.

Q. What were your duties there?

A. My duties were to put order in the system of keeping control of the stock, of supervising the office and correspondence; of soliciting business. And in my spare time to help out in the shop.

Q. In other words when you first entered the business your principal interest was the business end of it rather than the shop end, is that true?

A. That was not my choice.

Q. Was that the original arrangement?

A. That was the arrangement.

Q. Was that arrangement successful?

A. I don't know in what way you mean.

Q. Did that arrangement work out to your satisfaction? A. No. [609]

Q. Why?

(Testimony of Philip Lipson.)

A. During the 10 or 15 per cent of the time that I was able to devote inside of the shop and see the operations of the machine, I had discovered a lot of shortcomings of the machine.

There was a new machine that Mr. Loew had built at the time and was trying to put it into operation—into production.

The Court: Who had built it?

The Witness: It was built by Mr. Loew and his toolmakers.

And at the time when I came into the business the machines would operate for a half hour and would be down for three or four days.

Q. (By Mr. Mockabee): What type of machine was that—what was the machine for?

A. For manufacturing zipper chains.

Q. Did he have any other machines than the one you mentioned that he built?

A. He had four more of the same type that were being completed at the time—that were being assembled and there was one that was assembled.

He also had two what we in the trade called “single-header chain machines.” They make only one stringer instead of two.

And he told me those were machines that he brought in [610] from Canada, when he came from Canada, but that he did not operate them. He was trying to operate the double-header machine that he had built.

The Court: This one that he had of which he

(Testimony of Philip Lipson.)

had four similar ones unassembled was a double-header machine?

The Witness: That is right.

Q. (By Mr. Mockabee): These machines you have mentioned, either or both the single and double-header, did they form fastener elements from a strip of stock and attach them to a tape?

A. Yes.

Q. For what reason did these machines fail to operate for any length of time without a shut-down for repair?

A. Only one machine, the newest one. The double-header was that way. Not all of the machines.

Q. Well, the one that did shut down?

A. It had very many defects. The first thing I pointed out to Mr. Loew was that the whole design of the machine was contrary to accepted principles in the mechanical field; that it wasn't designed right.

Then I was trying to point out certain things that the zipper chain didn't come out right and little by little I had made improvements on the machine so that about three or four months later we were able to operate that machine at regular production without break-downs. [611]

Q. What difficulties with the operation of the machine were the cause of the shut-downs for repair?

A. Well, the very first one was the fact that

(Testimony of Philip Lipson.)

the zipper elements when attached to the tape did not move up with the tape upward but they got stuck in the punch and they rode up in the punch, punching up—eventually tearing up the tape.

Q. What else in your opinion contributed to the malfunction of the machine?

A. General design. He had—in some cases he had small ratchets with a small circumference with 156 teeth in them and the teeth were cut in the ratchet and they were razor-sharp on the edge and they jumped over. I suggested to him a remedy and that was to make the ratchet four inches in diameter instead of what it was—use a heavier ratchet or heavier teeth rather and then there were so many things in there that it is hard to enumerate all of them in succession.

I suggested remedies to at least seven or eight of them. These remedies were incorporated and the machine became a machine that was capable of producing with about, let us say about 85 or 90 per cent efficiency instead of what it was before.

Q. Approximately what was the efficiency before, if you can determine that?

A. Well, as I say before these remedies were put in, [612] these changes were suggested and supervised by me to put on the machine.

As I said, the machine would operate for a half hour and be down for three or four days and then we would fix it and it would operate for an hour or an hour and a half and then be down for another two days, so you really couldn't say "efficiency"

(Testimony of Philip Lipson.)

because we couldn't put the machine into production.

The Court: This is a good time to take our recess.

(Short recess.) [613]

Q. (By Mr. Mockabee): Referring to the machine which you stated had just been built and required frequent long periods of shutdown for repair, do you know the origin of that machine?

A. At that time——

Mr. Leonard Lyon: I object. The question is do you know? If he doesn't know, he shouldn't answer.

The Court: You can answer yes or no, do you know. That is the question.

The Witness: Yes.

Q. (By Mr. Mockabee): What was it?

Mr. Leonard Lyon: I think he ought to tell us how he knows. It seems as if when he arrived that the machines were there. How would he know the origin unless by hearsay, I don't know.

Mr. Mockabee: Answer the question.

The Court: Let's find out. You can move to strike it out.

The Witness: What was the question again?

Q. (By Mr. Mockabee): Do you know the origin of the machine? And you answered yes. What was its origin?

Mr. Leonard Lyon: How do you know? I would like to ask on, voir dire. Because in his deposi-

(Testimony of Philip Lipson.)

tion on page 7 he was asked who built the machines? Answer, I don't know.

The Court: How do you know the origin of the machine? [614]

The Witness: I found out later.

The Court: How did you find out?

The Witness: From Mr. Loew and from an argument that I heard between him and Mr. Silberman.

Q. (By Mr. Mockabee): Who built the machine?

The Court: Just a minute.

Of course his answer to your question would now be his conclusion based on these other things. As to whether or not he can testify to conversation with Silberman, I don't know. Silberman is the predecessor in interest of the plaintiff Talon, as to this patent. Certainly you can't ask his conclusion based on these other things. If we get these other things in, that is different, but his answer as to who built the machines, based on these other matters, would be his conclusion based on the conversation with Loew and a conversation he overheard that Silberman took part in.

Mr. Mockabee: I will withdraw the question.

Q. (By Mr. Mockabee): Did the machine have any name plate on it? A. No.

Q. From your knowledge of machinery, and from the appearance of the machine, was it a machine which appeared to be one of a number

(Testimony of Philip Lipson.)

which might have been made in ordinary commercial production?

A. I don't know how to answer that. Would you repeat [615] the question? I am not clear about the question.

Q. Let me put it this way: From the appearance and structure of the machine and from your knowledge and observation of other machinery of various types, did it appear to you in your opinion as a machine which was one of a number which had been made in regular commercial production?

Mr. Leonard Lyon: I don't know what the answer to that would be. If he said no, I wouldn't know whether it was because the facts in the question wouldn't enable him to tell, or whether he could tell, and the answer was no.

The Court: Let's save some time. This man obviously has a background as a machinist, he ought to be able to tell from looking at a machine whether the machine had been custom made—he might be able to tell whether it was custom made, by looking at the parts, whether certain of the parts had been hand made, or whether it gave the appearance that it had been run off on an assembly line.

Could you answer that question?

The Witness: It is very difficult to state by looking at a machine whether it was one of 50 built or whether it was one machine built by itself. That is difficult to state.

The Court: Do I understand there were four

(Testimony of Philip Lipson.)

similar machines that had not been assembled?

The Witness: That's right.

The Court: Identical to this first one? [616]

The Witness: Yes.

The Court: All right.

Q. (By Mr. Mockabee): Were these machines all completed when you joined forces with Mr. Loew? A. No. Only one was completed.

The Court: By completed, do you mean assembled or—"completed" has various meanings.

Q. (By Mr. Mockabee): Were the parts all built and assembled?

A. Of how many machines?

Q. Any of them.

A. One was assembled, four were not.

Q. Were all of the parts completed on the four that were not assembled? A. No.

Q. Did you observe any parts being made in your shop? A. Yes.

Q. You stated that one of the defects of the machines of the type regarding which you have just testified was that the zipper element stuck in the punch. Was anything done to remedy that situation? A. Yes.

Q. What was done?

A. Do I have to give an answer yes or no? Or can I qualify this answer? [617]

Q. Explain what was done.

A. I at first suggested to Mr. Loew that the difficulty was that the punch was made in such a way with a half—

(Testimony of Philip Lipson.)

Mr. Leonard Lyon: I object to this as not responsive to the question. He was asked what was done, and he gives us a conversation that we weren't parties to.

The Court: All right. The conversation may go out.

Without stating what the matter was, you had a conversation with Mr. Loew, is that right?

The Witness: Yes. I suggested——

The Court: Did you make certain suggestions?

The Witness: That is right.

The Court: Did he follow your suggestions?

The Witness: One of them.

The Court: Then what did you do?

The Witness: We made—I designed one of these here, which we call an ejector, that when the element rides up into the punch, this is a clamp that clamps the punch into the punch holder, and when the element rides up in here, this little tongue forces it out, so that it cannot stay. That was a compromise between the original idea and the one that was adopted. An ejector plate.

The Court: Do you want the ejector plate marked? He handed me two. He said here is the first one and here is one I made later. [618]

Mr. Mockabee: The first one, I would say.

The Court: Defendant's Exhibit AO, received in evidence.

(The exhibit referred to was received in evidence and marked as Defendant's Exhibit AO.)

(Testimony of Philip Lipson.)

Q. (By Mr. Mockabee): With regard to the ejector, Exhibit AO, I notice on one side a flat channel and down its center there is a half round rib which terminates in a sharpened portion extending beyond the main edge portion of the plate; can you tell me the relationship of that rib to the forming punch on the machine?

A. This plate had two functions. It acted as a clamping device to clamp the punch into the punch holder; the tongue fitted into the groove of the punch where it acted as an ejector device. [619]

The Court: By the "tongue" you mean the rib that counsel just asked you about?

The Witness: The rib is underneath and the end of it becomes the tongue.

The Court: Counsel asked you as to Exhibit AO and about this rib, what he called a rib extending up and down.

The Witness: Yes.

The Court: And that rib fits into a——

The Witness: Slot.

The Court: A slot in the punch, is that right?

The Witness: Yes.

The Court: All right.

Q. (By Mr. Mockabee): Now, which end, the upper or lower, goes into the projecting portion of the rib? A. The lower.

Q. Where does the lower end of that rib lie with respect to the cutting portion of the punch when it is assembled in the machine?

A. Above the cutting portion of the punch.

(Testimony of Philip Lipson.)

Q. Any substantial difference?

A. Approximately, about a quarter of an inch.

The Court: Now, you have me confused. Exhibit AO, I take it, is connected with the punch block?

The Witness: Yes.

Mr. Mockabee: Secured to the punch block.

The Witness: Yes.

The Court: In this fashion with the projection downward?

The Witness: Yes.

The Court: And likewise the punch is secured in the punch block with uneven portion downward, the cutting portion downward?

The Witness: Yes.

The Court: But do I understand now that what you are trying to say is that in Exhibit AO it does not fit clear to the lower portion of the punch but remains upward?

The Witness: A little above.

The Court: Is this slidable when the machine is in operation?

The Witness: No.

The Court: Or is it tight, one piece to the other?

The Witness: This punch goes into a slot in the punch holder and this part here acts as what we call a clamp. It is fastened tight and it holds this punch.

The Court: So the punch and the punch holder are fastened together so they do not move?

(Testimony of Philip Lipson.)

The Witness: That is right.

The Court: While the machine is in operation?

The Witness: Yes. The other side of this here is made with a little groove that goes in here and any zipper member or element that slides up here is ejected so it can't ride up [621] in the punch.

Q. (By Mr. Mockabee): Was much difficulty encountered in the elements sticking in the groove of the punch prior to the application of your ejector? A. Yes.

Q. What happened to the machine when this occurred?

A. They would bunch up inside of the groove of the punch, one right after the other, until they would tear the tape.

Q. Was it necessary to shut down the machine to clear these members from the machine?

A. Yes.

Q. How long after you observed the operation of the machines which were in the shop when you entered into business with Mr. Loew, was it before you developed this ejector?

Mr. Leonard Lyon: If your Honor please, counsel refers to "observing the operation of machines." The witness has only talked about there being one assembled machine in operation.

I would like to have counsel identify the machines in his question.

Mr. Mockabee: I will change my question to make it machine, singular.

The Witness: It was two weeks later.

(Testimony of Philip Lipson.)

Q. (By Mr. Mockabee): In other words it was rather [622] immediately after you first saw these machines, is that true?

The Court: It was two weeks after what? Two weeks later than what?

The Witness: Two weeks after I observed these machines in operation that I noticed this trouble here and I designed this one to remedy the trouble.

The Court: Now, you went with Loew in June of 1947?

The Witness: Yes.

The Court: How long after June, 1947 was it that you observed the machine or machines in operation?

The Witness: The same day.

The Court: One machine was operating?

The Witness: That is right.

The Court: That is the machine you made this ejector, Exhibit AO for?

The Witness: Yes.

The Court: All right.

Q. (By Mr. Mockabee): Did you make any other improvements on that machine? A. Yes.

Q. Describe another one.

A. The next improvement was that I changed the wire feed assembly—that is the mechanism which propels the strip forward when it is being operated in the machine.

Q. What was the difficulty with the wire feed [623] assembly when you first observed the machine?

(Testimony of Philip Lipson.)

A. They had the small ratchet. I believe it was about two and three-quarters inches in diameter with 156 teeth on it. And they were razor sharp—there were razor sharp edges on them.

The pawl that moved the ratchet was located underneath.

I designed a new ratchet to hold the assembly bracket, to hold the pawl, to enlarge the ratchet and after that the machine operated all right with respect to this particular function.

The Court: You say a new assembly bracket to hold the pawl?

The Witness: Yes.

The Court: Hold what?

The Witness: Pawl.

The Court: Spell it.

The Witness: P-a-w-l.

The Court: What is a "pawl"?

The Witness: An intermittent motion to propel a ratchet. There is an arm with a little hook on it. This keeps moving back and forth and each time it engages a tooth of the ratchet it pushes it forward and then it slides back into the next tooth and then the next movement forward it pushes another one. That is an intermittent pawl movement.

The Court: You made a new assembly bracket to hold the [624] pawl and a larger ratchet?

The Witness: Yes.

Mr. Mockabee: Was there any other improvement made by you?

(Testimony of Philip Lipson.)

The Witness: Yes. I redesigned the punch holder block.

Q. (By Mr. Mockabee): In what manner?

A. The machine was built with a punch holder block with adjusting screws for the punches to be adjusted downward or upwards as they were needed.

This punch holder block at the top was only $\frac{3}{8}$ th of an inch thick and in the operation that acted like a spring so that we did not have accurate punching.

I redesigned the whole block and put in heavier metal, a heavier punch holder block so that—and adjusting screws to hold these screws so they wouldn't loosen up in operation.

Q. Does the clerk have those parts removed from Exhibit 5?

The Clerk: Yes.

Q. (By Mr. Mockabee): Here is a portion of Plaintiff's Exhibit 5 which was removed from the machine the other day and I will ask you to identify it.

The Court: Let me refresh my recollection. This machine that it was removed from is one of plaintiff's machines?

Mr. Mockabee: Yes, Plaintiff's Exhibit 5.

The Court: Plaintiff's Exhibit 5. All right.

Q. (By Mr. Mockabee): I ask you to identify that.

The Court: The witness is looking at a "T"-shaped member that was taken out of the machine,

(Testimony of Philip Lipson.)

Exhibit 5, and is a part of that exhibit here. It is a part of Exhibit 5.

The Witness: That is a part which I removed from the machine, Exhibit 5, in the other courtroom.

Q. (By Mr. Mockabee): What is its function?

A. This is a punch holder assembly block.

Q. What is the square plate on top of the "T" portion of the block?

A. This is a plate similar to one I designed for tightening up these two set screws.

Q. What are the set screws for?

A. These set screws adjust the punches.

There is an intervening block in here. The punch goes into this here space up to this block——

The Court: The block is a filler?

The Witness: Yes.

The Court: Between the screw and the punch?

The Witness: Yes.

The Court: All right.

The Witness: And when you adjust this here to a certain height the punch has to be a certain height in relation to the die underneath and in order to reach that particular relation you may have to move this punch downward or adjust [626] it upward and this set screw adjusts it.

Now, this block here I designed in 1949.

The Court: Well, you are referring to the little square, rectangular block on top of the "T" which holds the set screw?

The Witness: Yes.

(Testimony of Philip Lipson.)

The Court: And this came off of plaintiff's machine. Do you say you designed it?

The Witness: That is right. I have a punch holder block that I brought along here in one of the boxes and I can show the very same thing which I designed in 1949.

The Court: You just said that you redesigned this block. You said it had adjustable screws and that the block at the top was $\frac{3}{8}$ th thick. How thick is the one on there now—this little block?

The Witness: Your Honor, the problem is counsel was under the impression that—my counsel has asked me what improvements I made on the machine while I was associated with Mr. Loew.

This block here and various other improvements on the machine were made by me after Mr. Loew left the company. This was one of them.

The Court: I know.

Q. (By Mr. Mockabee): Now, Mr. Lipson—

The Court: Wait a minute. I am not finished. What I [627] am trying to find out is this. I understood you to say that these machines that Loew had when you went with him you worked on.

The Witness: Yes.

The Court: And one of the improvements you made you now say you made after Loew left, which was to redesign this punch holder block. [628]

The Court: And you said that one of the troubles was that this block at the top, and I take it that you are talking about this rectangular block here—

(Testimony of Philip Lipson.)

The Witness: Yes.

The Court: Was $\frac{3}{8}$ of an inch thick, and it acted as a spring, and you made it heavier. What interests me is the fact that this present block on the part of Exhibit 5 that we are looking at is less than $\frac{3}{8}$ of an inch thick.

The Witness: Your Honor, this is not the block that was in question. My counsel showed me this block, and this is not the item that I was talking about.

The Court: Are you talking about the top of the T?

The Witness: We have a top part here which is not identical with this one at all.

The Court: I see.

The Witness: I have one over there which I would like to illustrate. This isn't the item that we were talking about.

Mr. Mockabee: Will the witness get the item that he is speaking of?

The Witness: It is over there.

This is a punch holder block, which we are using now. It is not in the same shape as it was at that time. At that time this was the part that was—did I say $\frac{3}{8}$? It was $\frac{3}{16}$ of an inch thick. These screws went there in order to [629] adjust these punches. The block at the top being that thin, when the punch pressed down, this $\frac{3}{16}$ of an inch block kept on springing up. At that time I redesigned it and I put the part on here with longer

(Testimony of Philip Lipson.)

screws, and we put in here little set screws that tightened up this screw from this end.

In 1949 I redesigned this again, and I designed this little block here, which was made in the following manner: The thread was tapped through here, while this was fastened down. After it was tapped through, we took the underside of it and we removed, ground off, approximately one-thousandth of an inch. Thereby when you set it back in here, and the screw is turned in, there is a one-thousandth of an inch space between. When you tighten this up here, this here presses down against the threads inside and keeps these two from turning while this is in operation, because there is vibration in the machine. This is what I designed in 1949, and this is the same thing that I found on Plaintiff's Exhibit, the same function.

The Court: Have you inspected this T-shaped object that came off of Plaintiff's Exhibit 5 which contains on the top of it a small square rectangular block, to see whether it also has been made with a thousandth or some similar space to perform the same function?

The Witness: I had no means of checking it, your Honor. The only function that I can see of it is the same function [630] that mine has.

The Court: I don't know that we can make the record show the block of the defendant that he has been talking about, except that it is a punch block which has space for about four different tools or punches.

(Testimony of Philip Lipson.)

The Witness: Yes.

The Court: And has slots in which the punches operate and clamps to hold the punches on, and presently has a piece at the top of the slot where the punches operate of about—it is less than a half inch. What is it?

The Witness: This is approximately a half inch.

The Court: About a half inch.

(Continuing) —through which the set screws operate against the punches. And on top of the half inch bar, which runs across the top of all four tools or punches are the small rectangular squares through which the set screws also run.

There are only two of those rectangular squares.

You didn't use them on the other punches?

The Witness: These are not punches; these are cams. There are two little set screws here. There is one underneath here. When you tighten this up here, this is a much better form of tightening these screws from turning from vibration.

On these here, it isn't necessary, because this has one adjustment, and these are tightened. [631]

The Court: Instead of having a place for four tools, it has two slots, it is the double head?

The Witness: Yes.

The Court: And the other objects are cams?

The Witness: That's right.

The Court: All right.

Q. (By Mr. Mockabee): On the machine you first observed in Union Slide Company's plant when you went into business with Mr. Loew, was

(Testimony of Philip Lipson.)

there any means provided for locking the punch adjusting screws? A. No.

Q. What occurred to the punches or the adjusting screws or both, without the locking means, which you developed?

A. From vibration they loosened up, and then invariably the punches would have no support and move upward, and we would not get the proper projection height that is necessary for a good zipper.

The Court: Is that blocking means something new, or is that a rather common thing in the industry?

The Witness: I had never seen that before. I had two tool makers working for me, when I suggested that we make that, and they said that they had never seen or heard of it, and they figured it was a good idea.

The Court: It is not very much different from the idea of using two nuts as a lock, is it, except that you rotate one [632] nut down against the other for the lock, and here, of course, you don't rotate your top——

The Witness: No. It is generally, I would say, on the same principle, except that the application of it is different.

The Court: All right.

Mr. Leonard Lyon: If your Honor please, we are spending a lot of time on this, and I don't understand the materiality of it. Does the witness claim some patent on any of these improvements?

Mr. Mockabee: No, your Honor.

(Testimony of Philip Lipson.)

Mr. Leonard Lyon: They have been in public use for many years and are in the public domain, aren't they?

Mr. Mockabee: We are not claiming any patent rights in them; we are pointing out features of the machine which were impractical and disadvantageous and caused trouble, and improvements made by the defendant in order to make the machines operable.

Mr. Leonard Lyon: There is no counterclaim based on any such improvements.

Mr. Mockabee: No.

Mr. Leonard Lyon: I don't understand the theory.

The Court: I haven't yet identified these Loew machines. I don't know what the testimony is going to show as to where they come from, what they were, or whether they were supposed [633] to be Silberman machines, or not.

Mr. Leonard Lyon: I don't know.

Mr. Mockabee: Regardless of the origin of the machine itself, at the time Mr. Lipson entered into business with Mr. Loew, I am trying to point out—I think the witness has already brought out—some of the several difficulties that caused the machine to be frequently shut down because it wouldn't operate properly.

The Court: I understand that.

Mr. Mockabee: And it was not the originator of the machine, but Mr. Lipson, the defendant, who made the machine operate.

(Testimony of Philip Lipson.)

The Court: All right. But what do you expect to show as to where these Loew machines came from?

Mr. Mockabee: It is the type of machine that is the type that is accused in this case.

The Court: Do you have any proof where Loew got them? Whether they are Silberman machines, or did he build them?

Mr. Mockabee: I don't think Silberman had anything to do with building them. It is a double-headed machine involving the same general functional principles, approximately, as the type of machine in suit. And there are features which are found today on the Silberman machine, similar to Exhibit 5, and including Exhibit 5, which if they function at the speeds claimed by plaintiff are capable of so functioning because of [634] improvements made, not by Silberman but by the defendant. In other words, we are saying that the machine originally, of that general type, wasn't a good practical machine.

The Court: All right. I get that point. And we will pass that for a minute. But do you make some contention that Lipson made these improvements on machines that he had, and that somehow or other the plaintiffs got Lipson's improvements and put them on Silberman's machine?

Mr. Mockabee: Yes, sir, I think we can bring that out.

The Court: All right. Let's pass that and go back to the first one.

(Testimony of Philip Lipson.)

Suppose that the machines that Loew had were substantially identical to Silberman machines, or the machine shown by the Silberman patent, but that for the two or three reasons you state the machine wasn't working too well, but it was a machine that was substantially the Silberman machine, the machine shown in the Silberman patent, it had all the elements, they worked in the same relative manners, could a defendant avoid infringement by showing that he made a few devices and made the machine work better?

Mr. Mockabee: I don't know that it was identical with the Silberman machine, your Honor. I don't know whether the defendant knows that. The defendant is not a patent lawyer. But he did know that there were machines in the plant, including the particular machine in question, which had means for [635] feeding a tape and a piece of stock, forming elements and attaching it to a tape.

The Court: I didn't ask you specifically. I gave you a hypothetical question. Assume for argument that the machines in the defendant's plant were machines which had all the elements of the Silberman patent, functioned like the Silberman patent, that they didn't function well, could the defendant avoid infringement by making them operate better, or even by making a few devices that he put on and made them operate better?

Mr. Mockabee: I wouldn't say he could necessarily avoid infringement by making a few small points. It is a matter for the court to decide

(Testimony of Philip Lipson.)

whether some of these changes were what made the difference between a machine which would operate and would not operate.

The Court: In other words, if the Silberman patent on paper looked like a good machine, but wouldn't operate at high speed——

Mr. Mockabee: Yes, sir.

The Court: And if the plaintiff's contention is that Silberman invented a high speed machine, and yet it didn't so operate, and if these improvements made it operate as a high speed machine, then, therefore, the Silberman machine was not operative in the way in which plaintiffs claim, is that your position? [636]

Mr. Mockabee: Yes.

The Court: All right.

Mr. Mockabee: I wish to offer the ram block and punch block assembly described and produced by defendant as Defendant's Exhibit AP.

The Court: AP received in evidence.

(The exhibit referred to was received in evidence and marked as Defendant's Exhibit AP.)

Q. (By Mr. Mockabee): Mr. Lipson, you identified and described Exhibit AO, the ejector member; I show you the parts removed from Plaintiff's Exhibit 5 and ask you if you can find a comparable element among them. A. Yes.

Q. (By Mr. Mockabee): Will you describe it?

A. This is a piece of spring steel with a little

(Testimony of Philip Lipson.)

tongue at the bottom which fits into the shearing punch in this manner to eject the element.

The Court: It performs substantially the same function as Exhibit AO performs on your machine?

The Witness: Yes.

The Court: And operates in much the same manner, I take it?

Is the small device which looks like a nail file permanently fixed to the punch by a punch block?

The Witness: Yes, sir.

The Court: I think you had better have that identified as an exhibit, gentlemen.

Mr. Mockabee: If we can call it the ejector of Plaintiff's Exhibit 5 or give it a sub-classification, whichever the court wishes.

The Clerk: The plaintiff asked us not to mark them because they want to put them back on the machine.

The Court: What do you intend to do? It is the plaintiff's machine that is in Judge Hall's courtroom.

Mr. Leonard Lyon: We hope to put the machine back together and use it again. We have no duplicates of those parts to put in as exhibits and these parts belong back in the machine. [638]

The Court: Well, whether they are marked or not——

Mr. Leonard Lyon: It doesn't make any difference.

The Court: They are in evidence and you are

(Testimony of Philip Lipson.)

not going to get them released except by stipulation or at the final settlement of this case. It doesn't make any difference.

The Clerk: The machine is in plaintiff's custody, your Honor. You made an order to that effect.

The Court: That is right. We did make an order to that effect.

Mr. Leonard Lyon: They can stay there. Mr. Meech tells me we can get more parts.

Mr. Mockabee: I appreciate that.

The Court: I will identify this fingernail-shaped thing, which the witness says is the ejector of the plaintiff's machine, and give it the exhibit number 5-1.

The Clerk: 5-A will work better.

The Court: All right, 5-A received in evidence as part of Exhibit 5 and marked "A."

(The document referred to, marked Plaintiff's Exhibit 5-A, was received in evidence.)

Q. (By Mr. Mockabee): Mr. Lipson, was there an ejector made of a strip of substantially flat spring steel with a narrow finger extending from one end thereof and at a slight angle to the remainder of the strip in the machine which you first saw operating at Union Slide Fastener Company and which [639] we have been discussing?

A. No.

Q. Was any means provided on that machine for ejecting elements which might become stuck in the punch? A. No.

(Testimony of Philip Lipson.)

Q. Do you recall any other improvements which you made on the machine you first saw operating at the Union Slide Fastener Company?

A. I made many improvements on those machines. It would be at least 25 or 30 of them.

Q. You say those machines. Do you mean that particular machine alone or that one and others similar to it?

A. Others similar to it in later years—over a period of eight years——

The Court: Do you still have those five machines, the four that were unassembled and the one that was assembled when you went with Loew?

The Witness: Two of them we have in stock. Others were built later.

Q. (By Mr. Mockabee): But in general except for the changes which you have made are they approximately the same?

A. The same in what? Shape? Size or outlook? I don't understand the question.

Q. With regard to their functional parts.

The Court: Were they the same as that first machine [640] that Loew had operating when you went with him except for the changes you made?

The Witness: Yes.

Q. (By Mr. Mockabee): When you first went into business with Mr. Loew and when this particular machine that you first saw was in operation, approximately how fast did it operate?

A. 1,000 RPM's.

Q. Did you try to run it any faster?

(Testimony of Philip Lipson.)

A. Yes.

Q. What happened?

A. The machine vibrated. The zipper elements that came out of it were not as good as when they were run at a slower speed.

And the punches and dies did not last as long as they did when running the machine at a slower speed.

Q. Did any of the improvements made by you operate to increase the speed of the machine?

A. Yes.

Q. What were they?

The Witness: (No answer.)

The Court: The ones you have told us about, the three improvements.

The Witness: Oh, there were a number of improvements. I had moved the positions of various engaging parts of the machine. [641]

Q. (By Mr. Mockabee): In other words there was a gradual series of developments and improvements to increase its speed?

A. That is correct.

Q. Are you now operating machines of that general type in your plant? A. Yes.

Q. What is their present speed of operation?

A. 1500 RPM's.

Q. Can you run them any faster than that?

A. Yes, they can be run at a faster speed.

Q. Why don't you run them faster?

A. Because of the same reasons I outlined before—that if these machines are run faster there

(Testimony of Philip Lipson.)

are certain other improvements that have to be made on them. At the present time if you run them faster they will vibrate and do the same, the very same thing—have the very same deficiencies of operation as I stated before.

Q. I notice on Exhibit AP the ram has “V”-shaped ends. What are these for and how do they fit with the rest of the machine?

A. These here?

Q. The “V”-shaped ends of the ram. At either end of the ram there is an angle of, it appears to be about 90 degrees so that the ends are more or less pointed. [642]

A. They fit into a gib housing which guide this ram block vertically up and down.

Q. In other words the gib housing is stationary and the ram block reciprocates vertically in that housing, is that true? A. Yes.

Q. Have you encountered any difficulties with respect to this particular portion of the machine?

A. What kind of difficulty?

Q. Any kind. A. (No answer.)

The Court: Well, does it freeze?

The Witness: If you run them at higher speeds the expansion of the metal will freeze the ram block in the gib.

Q. (By Mr. Mockabee): Have you actually encountered this difficulty? A. Yes, we have.

Q. At what speeds?

A. At speeds of 1500.

(Testimony of Philip Lipson.)

Q. So that you run your machines at less than 1500 RPM's a minute?

Mr. Leonard Lyon: He just testified he ran them at 1600.

The Court: No, 1500.

The Witness: 1500. [643]

Q. (By Mr. Mockabee): Do you run them at 1500 or less? A. 1500.

Q. That is your operating speed, is that correct? A. Yes.

Q. And higher than that they heat and freeze?

A. Yes.

Q. Is there any way in which you could make the machine with the gib housing for the ram block operate faster in your opinion and in your experience with these machines? A. Yes.

Q. How?

A. By removing some weight from this ram block.

Q. Some weight?

A. Weight, yes, by substituting an aluminum ram block with metal inserts which would permit increased speed.

Q. Have you ever seen a machine constructed in that manner? A. I beg your pardon?

Q. Have you ever seen a machine constructed in that manner? A. No.

Q. Where did you get the thought for that improvement?

A. By figuring out this in the design of the ma-

(Testimony of Philip Lipson.)

chine with the punches being located away from the center of the pull. [644]

Now, this is the center of the pull. The punches that do the stamping are located away from the center of that. In that respect there is a certain amount of leverage like with a hammer and there is a hammer action in punching out.

That is what I stated in the beginning, that I found fault with the design of this machine.

In a normal press the center of resistance should be located right in the same position as the center of the force that pushes it down. Wherefore, this is off center and it acts and has a leverage action in the same manner as a hammer and acting in that manner if you remove weight, the more weight that is removed from these parts here the less of that hammering action you will get.

Like, for instance, taking a steel hammer and hitting something with it and then taking an aluminum hammer and in that manner you can increase the speed of the machine.

Q. Can you recall any other changes you made on the machine that materially affected its operation?

A. When you ask me about the machine, do you mean the general thing taking in all the tools and parts of it? I don't understand.

There is what we call a machine part and there is a tool part which are interchangeable in the machine.

I have made many changes in the design and

(Testimony of Philip Lipson.)

shape of the tools that co-operate or are attached to the machine and are [645] reciprocating means?

Q. My remark was directed generally to any parts of the machine, whether they are machine parts or tool parts. [646]

A. Yes. One of the changes that I have made is putting a little lip on the jaw of the—the closing jaw, which closes the member. I have made a little drawing which is on my pad there, which outlines the function of this. This is the little lip, that is 50 times an enlargement of what this little thing is here (indicating).

The Court: All right.

Q. (By Mr. Mockabee): That lip functions to hold the element against what type of movement?

A. When you cut a piece of metal, assuming that this is a piece of metal that is being cut at this point here, now if this part is laying flat on the die and this part is to be cut, whenever that cut is made there is a tendency of this part to tilt upward. Now, that is the element that is being cut off while it is astride the tape, there is a tendency of it to turn upward, and it forms what we call a herringbone shape on the zipper, in other words, instead of them being parallel, interlocking like this, they will be at this angle here (indicating).

Now, the function of this is to hold——

The Court: Indicating that the zipper elements would not be exactly at right angles to the tape——

The Witness: That's right.

The Court: ——but would be pointed up or down.

(Testimony of Philip Lipson.)

The Witness: Yes. [647]

The Court: Generally what—up?

The Witness: They would generally be in this position on the tape. If the tape were this way, they would be in an upward position. The legs would be at an upward position and the head downward.

Mr. Mockabee: I offer the sketch made by the witness showing an enlargement in profile of one of the element closing jaws made by defendant.

The Court: The next exhibit will be A.Q. Received in evidence.

(The sketch referred to was received in evidence and marked as Defendant's Exhibit A.Q.)

Mr. Leonard Lyon: Is this something that you contend is present on Exhibit 5, the plaintiff's machine?

Mr. Mockabee: This is on defendant's machines.

Mr. Leonard Lyon: Not on the plaintiff's machine?

Mr. Mockabee: I haven't gotten to that yet.

Mr. Leonard Lyon: What?

Mr. Mockabee: I haven't gotten to that yet. I was just coming up to it.

Mr. Leonard Lyon: All right.

Q. (By Mr. Mockabee): Was there any provision, such as you have made on the clamping jaw shown in the sketch, in the original machine—in the machine you first saw operating at Union Slide Fastener? [648] A. No.

Q. Did that machine without the lip for holding

(Testimony of Philip Lipson.)

down the element as it was sheared produce her-ringbone zippers? A. Yes.

Q. Were zippers of that type objectionable?

A. Yes.

Q. For what reason?

A. They would not hold as well as the others because they were not parallel, and they did not look well. The slider didn't move up and down as smoothly as it would on a zipper where the elements are parallel.

Q. In observing plaintiff's Exhibit 5 did you find any comparable structure on the closing jaws of that exhibit?

A. I tested them at first when the machine was closed, and it seemed to me that it had it. I haven't observed it since then. If I were shown that particular part, I could identify whether it had it or not.

Mr. Mockabee: Probably tomorrow, your Honor, I would like to request an opportunity for observation, the court's observation, of an exhibit of defendant, which is also in Judge Hall's court room.

The Court: Exhibit 5 do you mean?

Mr. Mockabee: It is next to Exhibit 5.

Mr. Leonard Lyon: I will be glad to have the witness look at it again. [649]

Mr. Mockabee: And at that time I would like to have the witness further examine the jaws of Exhibit 5.

The Court: It is not in evidence, this other exhibit that you are talking about, is it?

(Testimony of Philip Lipson.)

Mr. Mockabee: Not yet, no, sir.

The Court: What machine is it?

Mr. Mockabee: It is a machine of defendant.

Mr. Leonard Lyon: The machine of the defendant or the plaintiff?

Mr. Mockabee: The defendant.

Mr. Leonard Lyon: I thought you were talking about looking at our machine.

Mr. Mockabee: No. This is one that we brought up after you brought yours up.

The Court: He also said that he wanted the witness to look at your machine again.

Mr. Mockabee: Yes, sir.

The Court: So you are right and wrong.

Mr. Leonard Lyon: He certainly can look at our machine, either with the court or without the court.

The Court: What does this little lip that you talk about on Exhibit A Q, the sketch—how does it function? Does it set in above one of the pre-formed zippers, or below it, or just what does it do?

Mr. Mockabee: Describe it to the court from the sketch, [650] if you will.

The Witness: I have one made up for it.

The Court: We will take it up tomorrow. This one, do you mean?

The Witness: No, not this one. There is another sketch.

The Court: We will take it up tomorrow. All right.

I suppose we had better start at 9:30. I want to get through with this case this week. 9:30 tomorrow morning.

(Whereupon, at 4:35 o'clock p.m., an adjournment was taken to 9:30 o'clock a.m., Wednesday, March 9, 1955.) [651]

Wednesday, March 9, 1955; 9:30 A.M.

The Court: Call the case.

The Clerk: Talon, Inc. vs. Union Slide Fastener Co., No. 10450, for further trial.

The Court: Off the record before you proceed.

(Discussion off the record.)

The Court: On the record. You may now proceed.

Mr. Mockabee: Your Honor, Mr. Graham was with us on Friday and Tuesday and found it absolutely necessary to return to New York last night.

He came out here primarily to handle the questioning on the counterclaim proposition of which he knew a great deal more than I and had knowledge which was not in the notes and papers which were turned over to me.

Mr. Lipson, will you take the stand again?

PHILIP LIPSON

called as a witness by the defendant, having been previously sworn, resumed the stand and testified further as follows:

Direct Examination—(Continued)

Mr. Mockabee: May I have the small box of parts from Exhibit 5?

(Testimony of Philip Lipson.)

(Objects handed to Mr. Mockabee.)

Q. (By Mr. Mockabee): Mr. Lipson, I hand you a pair of [654] parts removed from Exhibit 5 and ask you if you can identify them.

A. Exhibit 5 consists of a closing jaw and a closing jaw housing which I removed from Exhibit 5, Plaintiff's Exhibit 5 which is located in the other room.

Q. By "closing jaw" you mean the jaw which causes the legs of the zipper element to engage the tape? A. Yes.

The Court: Are you going to question him about these two parts now?

Mr. Mockabee: Yes.

The Court: Well then, let us mark the closing jaw Exhibit 5-B in evidence and the closing jaw housing as 5-C in evidence.

(The objects referred to were marked Plaintiff's Exhibits 5-B and 5-C, and were received in evidence.)

The Court: And both parts are from Plaintiff's Exhibit 5.

Q. (By Mr. Mockabee): Can you describe the shape of that portion of the closing jaw, 5-B, which actually engages the zipper element?

A. It is a slightly recessed surface with a little lip over it which in engaging the sides of the zipper scoop—with your Honor's permission, the word element and the word scoop mean the same thing in a zipper. Sometimes it is called scoops and sometimes elements and sometimes members. [655]

(Testimony of Philip Lipson.)

When they engage the legs of the member this little lip acts to keep the portion that is engaged downward so it doesn't tilt upward when the cutting is done.

Q. In other words, there is a downwardly directed shoulder on that surface? A. Yes.

Q. Do you know the origin of a hold down structure like that on a closing jaw?

Mr. Leonard Lyon: I object to that question as indefinite. Is the question directed to the origin of the structure in Exhibit 5, or is it directed to the origin of some other structure?

Mr. Mockabee: I said a structure.

The Court: Overruled. You can cross examine.

Mr. Mockabee: Answer the question.

The Witness: The question was whether——

Q. (By Mr. Mockabee): Whether you know the origin of the use of means on the closing jaw for holding the element down when it is being severed from the stock.

A. To the best of my knowledge, I was the first one in manufacturing zipper machinery to install this particular lip to act for that particular purpose.

Mr. Leonard Lyon: I object to the answer, your Honor, where it purports to indicate any priority over the plaintiff's Exhibit 5, because there is no evidence that the witness knows anything about the origin of Plaintiff's Exhibit 5.

The Court: Overruled.

(Testimony of Philip Lipson.)

As I remember Silberman '793, there is no lip on their closing jaw.

Mr. Leonard Lyon: I think that is correct.

The Court: Therefore, it is not one of the claims of the [657] Silberman patent, and the witness has now merely made a claim that he is the man that invented the little lip, or first used it, or whatever you want to call it, for whatever that is worth.

I don't know what effect that will have except on this general theory that he made the Silberman device operate at high speed when it wouldn't operate before. I don't know.

Mr. Mockabee: That is the general idea, your Honor.

Q. (By Mr. Mockabee): Do you recall about when you developed the idea of the lip or projection for holding the zipper element down when it is severed?

A. It was in the summer of 1949.

Q. What prompted you to design the closing jaw in that manner?

A. We were getting zipper chain made with scoops attached at a slant to each other instead of being parallel, commonly called a herringbone shape, and I tried various means to eliminate that, and one of the means was putting a holding device on the jaw to hold the scoop down when it is being sheared and attached to the tape.

Q. I believe you testified yesterday, did you not, that the herringbone arrangement of the zipper element on the tape was due to the fact that the ele-

(Testimony of Philip Lipson.)

ment was not properly held down when it was sheared? A. That is correct. [658]

Q. Did the tendency of a machine without the hold down lip on the closing jaw to tilt the element have anything to do with the speed of operation of the machine? A. Indirectly, yes.

Q. Can you explain that?

A. It had more to do with the quality of the zipper produced, and if the zipper chain did not come out properly from the machine, the machinist or operator would have to stop and try to correct it, and thereby the efficiency of the machine was reduced. It would also cause, often, the elements, the scoops, to be dislodged and go underneath the punches, unless they were held down. And that would also cause stoppage on the machine. In my estimation it would not make any difference as to the r.p.m. that the machine was running, capable of running, or not; it would only reduce the efficiency of operation on the machine.

Q. Then would you say it considerably slowed down the rate of production of zippers?

A. That is correct.

Q. When you became associated with Mr. Loew in the Union Slide Fastener Company, you stated yesterday that you saw the first double-headed machine in operation. Did you at that time have any knowledge of the Silberman patent '793 in suit?

A. No. [659]

Q. Did you know or know of Mr. Silberman?

A. No, I never heard of him.

(Testimony of Philip Lipson.)

Q. Did the double header chain machine of Union Slide Fastener have a device for spacing or providing an interruption in the feed of metal to produce intervals on the tape where no elements were attached? A. No.

Q. Do you know when or if such a device was installed on the chain machine of Union Slide Fastener?

A. Some time in August Mr. Loew and——

Q. August of what year?

A. August of 1947, it was two months after I associated myself with the company, the two of us visited the California Slide Fastener Company on a Saturday, and we saw there machines in operation, and they had an electronic counter in a cabinet that was attached to the wall, and by means of wires, electric wires, there was a connection between that cabinet and a solenoid which was attached immediately at the position where the metal feed mechanism was operating, and by means of that solenoid or counter operating the solenoid the pawl was lifted from the ratchet or moved away from the ratchet so that there was an interruption at specified moments of the feed of the metal, thereby creating a gap.

The Court: I think I understand this. This is so that elements would be attached to the tape for say 12 inches, and [660] then there would be a gap, and then they would be attached to the tape again for 12 inches, or 10 inches, if the machine was so set?

The Witness: That is correct.

(Testimony of Philip Lipson.)

The Court: All right.

The Witness: I also saw other machines. That was only connected on one of their machines.

Q. (By Mr. Mockabee): Pardon me a second. What general types of machines were used at California Slide Fastener?

A. Generally speaking, they were similar in shape and design, but not in detail, to the double header machine which I saw at the Union Slide Fastener Company.

Mr. Leonard Lyon: Called what?

(The answer was read by the reporter.)

Q. Now, you spoke of another type of machine in California?

A. No, not a type of machine—not a device for spacing——

The Court: Keep your voice up so counsel can hear you.

The Witness: Some of the other machines had a device for spacing which was based on an accumulation or integration of various sizes of gears.

They admitted that it took anywhere from a half hour to three-quarters of an hour——

Mr. Leonard Lyon: I object to that statement as to what they admit. Is that what you said?

The Witness: I said they admitted——

Mr. Leonard Lyon: Well, any admission I object to.

The Court: It may go out.

Did you see the operation of these other ma-

(Testimony of Philip Lipson.)

chines that had the mechanical spacing device other than the electronic?

The Witness: Yes.

The Court: Did you observe some lapse of time involved in the operation?

The Witness: The time involved in setting it up—in changing it from a 7 inch to 8 inch or 10 inch zipper, yes.

The Court: Did you observe that?

The Witness: Yes.

The Court: All right, go ahead. [662]

The Witness: I observed that it took nearly three-quarters of an hour to make the change.

Now, when we came back to our shop Mr. Loew and I discussed the matter and he wanted me to order an electronic spacing device for our machines.

We were informed that the price was \$800 and I suggested to Mr. Loew that I could build a mechanical device with levers and a sprocket and chain which would cost about \$50 or \$60 to build, to do the same thing that these other spacing devices did.

Q. (By Mr. Mockabee): Did you build one?

A. I designed it and built it and supervised the testing and it worked all right.

The Court: How long did it take the device that you built to convert from a 7 or 8 or 10 inch strip?

The Witness: Two minutes.

Q. (By Mr. Mockabee): Is that the type of spacing device used on your present machines?

Mr. Leonard Lyon: What "present machines"?

(Testimony of Philip Lipson.)

Mr. Mockabee: The machines in his plant at the present time.

The Witness: It is an improved device embodying mainly the same controlling factors but not the moving factors. In other words I eliminated the mechanically operated levers and installed instead a micro-switch and Solenoid arrangement [663] which is entirely in its design and in its arrangement and the type that I have seen on California Slide Fastener's machines.

Q. (By Mr. Mockabee): Does this present arrangement with the Solenoid micro-switch embody the same general principles that you first conceived with regard to a spacing device?

A. Yes, it does.

The Court: You inspected Exhibit 5 now in Judge Hall's courtroom?

The Witness: Yes, sir.

The Court: What kind of spacing device does it have?

The Witness: That is a spacing device which is a counter—a mechanical counter.

There is a company who builds those and we have the same thing installed in our exhibit there.

It is a company that manufactures a mechanical counter which is attached to the shaft and works according to a pre-arranged number of elements. It doesn't go by the length of the chain like our device worked but by the number of elements or scoops that are put on.

The Court: The result is the same?

(Testimony of Philip Lipson.)

The Witness: Yes; and it is a much better device than what I have.

The Court: So now on your machines in your plant you use, on certain of them, this mechanical counter made by this other firm and on other machines you use the micro——[664]

The Witness: They are both using the micro-switch and Solonoid. The only difference is that mine is using a sprocket and chain with certain pins on it which determine the length of the zipper, whereas these counting devices determine the number of scoops that are put on the chain and when a certain number is counted up then the micro-switch goes on and by means of the Solonoid lifts the pawl from the ratchet.

The Court: What are you now using on your machines in the plant?

The Witness: On one machine only, the sample I brought up here, we are using that particular counter.

The Court: The new one that is made by some independent firm?

The Witness: That is correct.

The Court: And on the other machines you are using an improvement of what you say is your device?

The Witness: That is correct.

The Court: Which improvement also has a micro-switch?

The Witness: That is correct.

The Court: All right.

(Testimony of Philip Lipson.)

Q. (By Mr. Mockabee): Besides your zipper manufacturing machinery do you have any other type of machine tools in your plant?

Mr. Leonard Lyon: We can't hear over here. You put your—— [665]

Q. (By Mr. Mockabee): Beside your zipper machine——

The Court: If you get back further away from the witness he will speak louder.

The Clerk: May I identify those two parts to be marked?

The Court: The closing jaw is Exhibit 5-B.

The Clerk: Which is which?

The Witness: The closing jaw is this part here.

The Court: And the housing is 5-C.

The Witness: May I ask my counsel something?

The Court: Yes.

The Witness: Do you want to enter this as an exhibit too. This is our own.

Mr. Mockabee: Yes. I wish to offer as Defendant's Exhibit AR an element closing jaw identified by the witness as coming from one of the machines in use by him and with an element engaging lip designed by him.

The Court: It will be received in evidence as Exhibit AR.

(The object referred to, marked Defendant's Exhibit AR, was received in evidence.)

The Court: This is the device of which you drew a picture yesterday?

The Witness: Yes, sir.

(Testimony of Philip Lipson.)

The Court: Which is sketch marked AQ.

The Witness: Yes. [666]

The Court: And Exhibit AQ is the design of the front with a lip?

The Witness: Yes.

The Court: All right.

Q. (By Mr. Mockabee): I will rephrase the question I put to you a moment ago. Do you have a machine shop in your plant? A. Yes.

Q. You said yesterday that parts of double-header machines were being constructed in Union Slide Fastener Company. They were when you associated yourself with Mr. Loew.

Did you observe anything else in Union Slide Fastener Company which was evidence of the construction of those machines?

A. At the Union Slide Fastener?

Q. Yes.

A. Yes, I did. In associating myself with the corporation we had engaged an auditor to audit the books and to determine the value, the net worth of the corporation and Mr. Loew's invention.

In auditing the books we came across a number of invoices from contract shops or job shops who did various parts for Mr. Loew — parts of the double-header machine which were later used in assembling it. [667]

The machine shop of the Union Slide Fastener Company did not have heavy tools—heavy tool machines with which to construct or to machine some of the heavy parts of the double-header chain ma-

(Testimony of Philip Lipson.)

chine. Therefore, some of this work was contracted out.

The smaller and more concise parts — the parts that have more close — that have closer tolerances were done at the machine shop of the Union Slide Fastener Company. [668]

The Court: Do you have those invoices?

The Witness: Yes.

The Court: Do you have them now?

The Witness: I believe they are—they may be there. There was a fire at our plant last year, and some of the old records were stored away in a place, some were burned and some were not. Now, I couldn't say for sure.

The Court: Let me ask you this: As to Exhibit AR, this closing jaw from your machine, did you make that?

The Witness: Yes.

The Court: Made it yourself?

The Witness: No. It was made at our shop.

The Court: By some mechanic under your direction?

The Witness: That is correct.

The Court: Tool maker?

The Witness: Yes.

The Court: Do you claim to be a tool maker yourself?

The Witness: Yes, your Honor.

The Court: Would you be capable of making a device like AR?

The Witness: I couldn't say. I was 25 years

(Testimony of Philip Lipson.)

away from the trade, and you lose a certain amount of skill, and this requires precision work. I couldn't say that I could. I never tried it.

The Court: Before you were away from the trade, could [669] you make things like this?

The Witness: Yes, I could.

The Court: All right. Go ahead.

Q. (By Mr. Mockabee): At that time in the early days were you actually ever employed as a tool maker?

A. Yes, I was. In Berlin, Germany, and later in Warsaw, Poland, and at the Ford Motor Company in Highland Park, Detroit.

Mr. Leonard Lyon: I don't think the witness has testified as to when he left Germany. I am trying to figure out how old he was when he had this experience.

The Court: When did you leave Germany?

The Witness: In 1919.

The Court: And how old are you now?

The Witness: I was born in 1898, November 15th.

The Court: You are 57?

The Witness: 56. I will be 57 in November.

Q. (By Mr. Mockabee): I believe you testified yesterday, did you not, that a good deal of your employment while you were in Germany was at a time when you were fairly young, is that not true?

A. Yes.

Q. Approximately how old were you?

A. I graduated at Trade High School, I was

(Testimony of Philip Lipson.)

15½ years old. I was four years under age when I was accepted into this high school.

Q. Speak a little louder, please.

A. I was four years under the age required to be accepted [670] into this high school, but I was accepted because of the fact that in mathematical knowledge I knew almost as much as was required to graduate that high school, when I entered at the age of 12.

Mr. Leonard Lyon: The witness has testified to something about 25 years when he was doing something else. I don't know whether he has told us what he was doing during those 25 years.

The Court: Yes. He said he went into commercial business.

Mr. Leonard Lyon: I don't know what business.

Q. (By Mr. Mockabee): State specifically what business.

A. Retail furniture and appliance business.

I entered it because I happened to speak five languages when I came to this country, and somebody induced me that I would have a hard job to continue with my engineering knowledge, that I couldn't make a living at it in the beginning—

Mr. Leonard Lyon: You weren't engaged as a mechanic or as an engineer at any time during those 25 years, is that right?

The Witness: No, I was not.

The Court: Let's go ahead.

The Witness: What was the question?

The Court: When I interrupted and we got off

(Testimony of Philip Lipson.)

on your ability or inability to make this device AR, we were talking [671] about the invoices that you had come across showing the making of parts, particularly those parts that required heavy machines for the machines at Union Slide when you went there with Loew.

Go ahead, counsel. Ask your next question.

Q. (By Mr. Mockabee): When you entered into business with Mr. Loew, was there any audit of the books and condition of the company?

A. Yes.

Q. By whom?

A. By an independent auditor whom I knew from Detroit, Michigan. His name was Mr. Greer. He was a CPA.

The Court: What has that got to do with this?

Mr. Mockabee: That is leading up to, your Honor, the association——

The Court: Go ahead and ask your question.

Q. (By Mr. Mockabee): Proceed.

A. I thought I answered the question.

The Court: He gave the name Mr. Greer.

Q. (By Mr. Mockabee): Did you tell Mr. Greer why you wanted this audit?

A. It was impossible for me to determine the value of certain devices or the value of a machine which was not or could not be purchased on the open market. We therefore decided to determine the net worth of Mr. Loew's investment by [672] an audit of his expenses up to and including the time of the association, and in checking this audit

(Testimony of Philip Lipson.)

he came across all of the expenses that he had in connection with building that machine.

Q. Among the assets in which you invested in Union Slide Fastener, were there any patent rights?

A. There was a license in question, a license to a patent, which was not a part of the Union Slide Fastener Corporation; it was owned by Mr. Loew.

Q. Personally?

A. Yes. And in purchasing into the corporation, it was made conditional upon my buying 50 per cent interest in the license and in the factory building where the Union Slide fastener was located.

Q. Do you recall from whom the license was obtained by Mr. Loew?

Mr. Leonard Lyon: I object to that. The license must have been in writing.

The Court: Sustained.

Do you have the license?

Mr. Mockabee: I was just going to bring that out. The license is in the hands or possession of an attorney here in town. Mr. Lipson has been trying to dig it out of him. Thus far they have been unable to find it.

We hope to find it before the trial closes. It is a [673] written license, your Honor.

Mr. Charles Lyon: Is that Mr. Schneider?

Mr. Mockabee: Lipson knows the man. I don't.

Mr. Leonard Lyon: Are we going into the litigation the witness had about this with Mr. Loew, in

(Testimony of Philip Lipson.)

which the witness charged fraud and invalidity of the patent?

Mr. Mockabee: No.

Mr. Leonard Lyon: You seem to be leading up to that. If you are going into that, I want to make certain objections.

Mr. Mockabee: I hope to bring out a patent license showing the origin of the machine in the plant when Mr. Lipson entered into business with Mr. Loew.

Mr. Leonard Lyon: I don't know what the patent license would show, but it certainly would have to be here in writing. We can't take oral testimony about it.

The Court: We couldn't take oral testimony as to the terms of the license, but we could take oral testimony that he had a license.

Mr. Leonard Lyon: That is correct.

The Court: Even though it is not here.

Mr. Leonard Lyon: I understand counsel wants to show from this license agreement certain things, which would require that the writing itself be produced.

The Court: It might or might not. Personally, I don't [674] see what the terms would have to do with it. It would seem to me to be more a question of what patent it was that had been licensed to Loew.

Mr. Mockabee: I am primarily trying to show the existence of the license. The reason for the machines that were built by Loew.

(Testimony of Philip Lipson.)

The Court: Is there any objection to letting the witness testify to the fact that there existed a license to Loew in which he bought a half interest, without describing the terms of the license?

Mr. Leonard Lyon: If the terms of the license are not involved, I have no objection.

The Court: Did you buy half interest in this license?

The Witness: Yes, your Honor.

The Court: On what patent was the license?

The Witness: On the Loew patent.

The Court: What Loew patent? Is there more than one?

The Witness: There was only one. Mr. Loew sold his patent rights in the United States and Canada.

Mr. Leonard Lyon: I object to this statement. He is now going into the terms of some transaction.

The Court: It may go out.

Is there only one Loew patent?

Mr. Mockabee: Yes. That is an exhibit. I don't have the number of it at this time. [675]

The Court: Let me see it.

Mr. Leonard Lyon: If your Honor please, I might state that the reason we are a little captious about this is because the witness filed an action in the nature of a counterclaim in the court, in the Superior Court here, charging that this Loew patent was invalid, and that he was induced to make this purchase of the license by fraud, and now I don't know what effect is to be given to the transaction, and that is why I want to be very careful

(Testimony of Philip Lipson.)

about the propriety of the evidence, the competency and the form of the evidence.

The Court: All right. I have sustained your objections and we are limiting it now to just what the patent was.

I show you Defendant's Exhibit O already in evidence; is that the Loew patent that you are talking about?

The Witness: Yes, your Honor.

Mr. Mockabee: Your Honor, Mr. Lyon has made some remarks about charges of fraud in a controversy between Mr. Loew and Mr. Lipson. I had just agreed that I was not bringing all this controversy into the case, because I did not see its pertinency, but I may be forced to now.

The Court: The mere fact that counsel made a statement doesn't mean a thing. It is not a part of the evidence in this case upon which this court would act.

Mr. Mockabee: It can create an implication, your Honor.

The Court: Not with me. [676]

Mr. Mockabee: That is fine. Thank you.

The Court: It doesn't mean a thing.

Mr. Lyon, to get your position straight, you don't make any contention that Mr. Lipson did not have an interest in some license under the Loew patent, Exhibit O?

Mr. Leonard Lyon: I do not, your Honor.

The Court: All right.

That is the extent of the evidence so far.

(Testimony of Philip Lipson.)

Mr. Leonard Lyon: I am interested in what implications are attempted to be drawn from that.

The Court: We haven't got there yet.

Q. (By Mr. Mockabee): Did you pay any substantial amount for your half interest in the Loew license? A. Yes.

Mr. Leonard Lyon: I object to that as immaterial. Sooner or later we are going to get into something that will take a lot of time, unless we avoid it entirely.

Mr. Mockabee: I am merely trying to show that——

Mr. Leonard Lyon: If that would be material, that he paid a large amount of money for this license, it is material, also, what I am prepared to prove, that he afterwards brought suit that he had been defrauded, that the patent was of no value.

The Court: Strike the question and answer out.

Did you pay a consideration, without stating it—— [677]

The Witness: Yes.

The Court: ——for this half interest in the Loew license?

The Witness: Yes, your Honor.

The Court: Go ahead.

Q. (By Mr. Mockabee): In your experience in mechanical fields, was it ever necessary for you to read and/or prepare drawings of mechanical devices? A. Yes.

Q. If you were shown a copy of the Loew patent, Defendant's Exhibit O, can you compare what

(Testimony of Philip Lipson.)

is disclosed in that patent with the types of machines in Union Slide Fastener when you associated yourself with Mr. Loew?

A. Compare as to shape, detail, or——

Q. The essential functional elements involved.

A. The essential functional elements involved are the same as in the machines we are using now.

The Court: The Loew patent shows a ram, does it?

The Witness: It does not give details of a machine; it just generally lists a press. This is a punch holder block. It can be attached to a ram or part of a ram. It doesn't show detail.

The Court: It is a punch holder block holding a punch 6 to make recesses and projections?

The Witness: That is correct.

The Court: And a device that makes notches and also [678] severs the ends?

The Witness: Yes, your Honor.

The Court: 34 is a cam?

The Witness: That is right. [679]

The Court: Is it a sliding cam?

The Witness: The cam to operate the jaws in and out.

The Court: It is a cam that has something like a 45-degree angle?

The Witness: Yes, your Honor.

The Court: And that operates the jaw?

The Witness: Yes, your Honor.

The Court: This uses a piece of strip metal?

(Testimony of Philip Lipson.)

The Witness: Yes, your Honor, as shown on the picture.

The Court: And it notches out a little bit of material which is waste material?

The Witness: That is correct.

The Court: On the sides?

The Witness: That is correct.

The Court: It has a device for holding the fabric and to raise the fabric intermittently in a vertical plane?

The Witness: Yes, your Honor.

The Court: And the strip comes across in a horizontal plane?

The Witness: Yes, your Honor.

The Court: And it has a corresponding die or reciprocating parts to meet the punch and cut it off?

The Witness: Yes, your Honor.

The Court: All right.

Q. (By Mr. Mockabee): What was the reasonable and [680] maximum operating speed of the machines when you first associated yourself with Mr. Loew?

A. Approximately 900 RPM on brass and 1,000 on aluminum.

Q. And I believe you stated yesterday that the present operating speed is what?

A. 1500 on aluminum. It is slightly less on brass.

Q. Is there any particular thing about the ma-

(Testimony of Philip Lipson.)

chines in their present condition which necessarily limits them to the 1500 revolution speed?

A. Yes.

Q. What is that?

A. I believe I testified yesterday the operation of this type of machine with a ram block of this weight——

The Court: Referring now to Exhibit AP, Defendant's Exhibit AP?

The Witness: This thing in my estimation will weigh approximately 18 to 20 pounds. Maybe I am wrong. I am not a good judge of weight.

Now when you take a ram block like this here with all the punches and you run it at such a speed of 1500 RPM you are creating an awful vibration in the machine which will affect the efficiency of the punches and dies you are working with.

It will affect the close fittings of the machine and in such vibrations in order to eliminate them one would have [681] to devise some—I would say an average or little better than average mechanical skill, to devise something that would eliminate this weight and would put these punches in a position where they are not so much off center.

The Court: Yes.

Q. (By Mr. Mockabee): Yes. I believe you did testify to that yesterday.

The Court: Yes, he did.

The Witness: One of the first suggestions when I was still with Mr. Loew was to remove the center of push from here similar to what the Exhibit 5

(Testimony of Philip Lipson.)

shows in there, which doesn't have a ram block but a block holding the punches and arms extending so that your up and down movements are more like in a spring.

I also had suggested to him to redesign the machine but it would have cost a lot of money.

Q. (By Mr. Mockabee): Yes, I believe you did explain that yesterday, Mr. Lipson.

Now, I would like to ask you from your experience generally as a mechanic, toolmaker and your experience with this particular type of machine, is the ram block and its guiding gibs the only thing that prevents it from running at a higher speed?

A. Yes.

Q. Do the changes which you have made and the improvements [682] which you placed on the machines of Union Slide Fastener have any particular limitation to the speed of the machine?

The Witness: I don't follow your question.

The Court: Read the question.

(Question read.)

Q. (By Mr. Mockabee): In other words can the machine except for the ram block and its guides be operated at any greater speed than 1500 revolutions per minute?

A. They can be operated at much greater revolutions but the work will not be efficient and the machine will not last very long.

Q. Is that due to anything in the original structure [683] of the machine or changes which you have made?

(Testimony of Philip Lipson.)

A. No, it is in the original design of the machine.

When you operate a gib like this here at high speeds—I mean a ram block in the bed of a gib, when you operate it at high speeds there is friction there and the friction tends to expand the metal.

For instance, in the machine that I found at the Union Slide Fastener, the gibs were made of tempered steel and so was the ram block and even at speeds of 1200 they would freeze up.

What I did later was to change the gibs from tempered steel to a high grade of cast iron. I forget the name of the cast iron. [683]

Cast iron being more porous you can make a closer fit and create less friction and thereby that was one of the things that enabled me to run the machine a little faster.

But in order to run it at 2,000 or 2,500 RPM the heat created would be so great that the machine would freeze up regardless if there were any other types of metal used.

In order to speed it up considerably one would have to eliminate the gib and the ram block.

Q. In your opinion, outside of the consideration of the gib and the ram block, do any of the improvements which you have made permit an increased speed of operation?

A. Yes, that is right.

Q. Particularly which one or ones?

A. In the machine that runs at this speed and with punches reciprocating—reciprocating punches

(Testimony of Philip Lipson.)

and dies that have to fit in this case here to a tolerance of 2/10,000ths, which is roughly one-tenth the thickness of the human hair, you have to have closely fitted parts to which it is attached.

In other words it is important that all the parts of the machine are very closely fitted, which I did not find in the first machine.

As I explained yesterday there was a 3/16 bar was put across here to hold the set screws. Now, that was something which the average mechanic—I won't say a toolmaker, but the average mechanic should know better. [684]

Now, this is just one minor item. The whole machine was built and constructed in such a way it couldn't operate efficiently and I believe I stated yesterday that the machine would operate for a half hour and would be down for two or three days, sometimes four days, to try to find a way to improve the condition that caused the breakdown. What I have done was start to rebuild nearly every functional part of that machine. The only thing I could not change was the general design because that would necessitate the junking of the whole machine and building a new one. So, I did the best I could in improving both the parts that were made—there were so many of them in order to enumerate it it would take too long a time.

I had marked down for my own memory a list of a few items on one of the patents that you inadvertently took back. These are not the ones.

I couldn't recall all of them because I listed the

(Testimony of Philip Lipson.)

most important ones on the patent. There were at least 35 or 30 changes that I made in the machine and the dies.

Q. What was the purpose of the list you made on the other patent, Mr. Lipson?

A. I beg your pardon?

Q. What was the purpose of the list you made on the other patent, Mr. Lipson? Merely to refresh your memory?

A. A few items I listed when we took the other machine [685] apart. I listed items which were improvements, which I made, on the machine and which I had also found on Plaintiff's Exhibit 5, in order to remember them and they are important ones, so I jotted them down at that time.

The Court: Well, you have testified about them all, have you not?

The Witness: Not all. I testified about two or three of them—the ejector, the lips on the closing jaws, the plate to tighten the punches——

The Court: You testified about those.

The Witness: And the punch with notches. That is something that we did not come to. It is an entirely different punch from the one found on the Silberman machine.

I believe one of these has been entered in evidence.

I have a punch here that comes from a Silberman machine—Silberman type machine. These are the two punches.

(Handing objects to the court.)

(Testimony of Philip Lipson.)

The Court: You have handed me two punches. You say one is from the Silberman machine and one from——

The Witness: That is correct.

Mr. Leonard Lyon: What does he mean by the "Silberman machine"?

The Court: The machine No. 5 I suppose. Is that what you mean, Exhibit No. 5?

The Witness: No, not Exhibit No. 5. I mean the [686] Silberman machine as shown on the patent and as I have seen at California Slide Fastener. I found out later on those were the original Silberman machines.

The Court: You handed me a punch, this one here.

The Witness: That is correct, your Honor.

The Court: Which you call a Silberman machine punch. We will mark this Defendant's Exhibit AS.

(The object referred to was marked Defendant's Exhibit AS for identification.)

Mr. Leonard Lyon: I still don't know, your Honor, where the punch came from.

The Court: And I am going to find out. Where did you get this punch, Exhibit AS?

The Witness: From Mr. Eisenberg of the California Slide Fastener Company.

The Court: And it came out of a machine there that you say is a Silberman machine?

The Witness: Correct.

The Court: Did you study the machine there at California?

(Testimony of Philip Lipson.)

The Witness: Yes, your Honor.

The Court: Did you compare it with the Silberman patent '793?

The Witness: Yes, sir.

The Court: And it is your testimony that the California [687] machine from which this punch AS came was designed according to the Silberman patent?

The Witness: Identical, your Honor.

The Court: You have handed me also a punch which I take it comes from one of the defendant's machines?

The Witness: That is correct, your Honor.

The Court: That will be marked AT for identification.

Mr. Mockabee: Your Honor, I have one of those already identified but not offered. It is Defendant's Exhibit D.

The Witness: There is one I believe already offered.

The Court: Well, let us forget about Exhibit D and have the two in here side by side.

Mr. Mockabee: All right.

The Court: Do you find Exhibit D there?

The Clerk: Yes. Here is one marked D for identification.

The Court: Yes, and that is the same as we have now marked AT for identification.

The Witness: May I see it, please? Yes, this is identical with this one.

(Testimony of Philip Lipson.)

The Court: All right. The record may show the witness said Defendant's Exhibit D for identification is the same as Exhibit AT for identification. Probably later on you will withdraw Exhibit D.

(The object referred to was marked Defendant's Exhibit AT for identification.) [688]

The Court: Now, what were you going to tell me about the difference between the two punches?

The Witness: AS is identical with the drawing in the Silberman patent.

The Court: That is Figures 60 and 61?

The Witness: Yes.

The Court: On sheet 8 of the Silberman patent '793?

The Witness: Yes.

The Court: It is a cut-off punch?

The Witness: Yes, sir, that is the shearing punch.

The Court: How does your punch Exhibit AT differ?

The Witness: This punch differs in this respect. If your Honor please, I brought along drawings to show an enlargement. They are a 50 to 1 enlargement to show the difference between the one and the other. It is there on the table.

The Court: All right, you may get it.

Is there any objection to receiving AS and AT in evidence?

Mr. Leonard Lyon: None, your Honor.

The Court: They may be received.

(Testimony of Philip Lipson.)

(The objects referred to, marked Defendants' Exhibits AS and AT, were received in evidence.)

Mr. Leonard Lyon: Off the record.

(Discussion off the record.)

The Witness: Your Honor, these are two drawings of the so-called strip. [689]

The Court: All right. We will mark the top drawing AU for identification and the second drawing AV for identification.

Has counsel seen the drawings?

The Witness: We handed counsel copies of these two drawings, the top one with the notches and without the notches the Silberman type.

The Court: Wait a minute. The top one — you want to identify the top one as——

The Witness: AU. And the bottom one is AV. That is the defendant's strip.

The Court: What is Exhibit AV—which patent?

The Witness: This bottom one is the one.

The Court: Let us call it AV.

The Witness: AV is the one we do with the notches, your Honor. I would like to explain——

The Court: Wait just a minute before you explain it.

Exhibit AV for identification is the way you operate with your punch?

The Witness: That is correct, your Honor.

The Court: All right. And AU is the Silberman operation of the Silberman punch?

The Witness: The original Silberman patent.

(Testimony of Philip Lipson.)

The Court: Based upon Silberman Patent '793?

The Witness: That is correct. [690]

The Court: All right. Now explain your drawing AV.

The Witness: If your Honor will notice, the low patent has notches on each side.

The Court: Yes, I notice that.

The Witness: At the left hand of this drawing is shown a dotted line showing this last scoop after it is closed and it is shown in full lines before it is closed.

If your Honor will notice that the portion of the notch, one portion of the notch forms the outside leg, and that is this part here, and the other portion forms the base of the leg. In other words the two lines here formed by the notching punch form the major part of the outside outline of the closed scoop.

In severing this the arc of the punch here, which is outlined here in a heavy line, joins this portion here where it is the apex of the notch and thereby forms an element which is completely sheared off.

(The objects referred to were marked Defendant's Exhibits AU and AV for identification.) [691]

The Court: Is that all done with one cutting, the notch and the rounded back portion of the element, or is there two cuts?

The Witness: No, the notch is done here, at this place here.

The Court: Done earlier in the operation?

(Testimony of Philip Lipson.)

The Witness: It is done earlier. It is two stations past the notch where the shearing is done.

The Court: All right.

The Witness: And the clamping is done at the same time when it is sheared off.

In this method here, which is not shown on the punch, but I have another sketch there I made out—in this formation here the closing of the jaws is done with one squeeze of the jaws. I have here——

The Court: Do you want to go to this new sheet, or do you want to talk about AU while we have got it here?

The Witness: We can go to AU.

The Court: All right.

The Witness: In this Exhibit AU, which is the Silberman method as outlined in his patent '793 there are no notches that form the legs. The legs are formed by the sides of the strip used, by the metal. The shearing of the arc when the element is severed forms the head, as well as the inside portion of the legs of the scoop. The outside portion of the [692] legs is not formed until the jaws squeeze it later and shape it into a round form. In that way these two punches differ in their operation.

The Court: All right. I understand it.

Is there any objection to AV and AU going into evidence?

Mr. Leonard Lyon: No, your Honor.

The Court: Received.

(Testimony of Philip Lipson.)

Now, you had another diagram you wanted to show me.

The Witness: I have a diagram——

The Court: Let's mark it AW for identification.

(The document referred to was marked Defendant's Exhibit AW for identification.)

The Court: Are both sides of this material?

The Witness: No.

The Court: The reverse side with a cross through it will have nothing to do with the case.

The Witness: I have drawn this sketch while Mr. Doble, the expert of the plaintiff, testified last week, and I drew this up to show my counsel just what I meant by the function of the lip in closing the jaws. At the same time I am showing in this sketch a difference between the closing of the jaws of a square shouldered element, which is in the Loew patent, used by the defendant, and the difference in the closing of the jaws of a round shouldered element, which is described in the Silberman patent '793. [693]

The Court: The top figure on your yellow sheet, AW, is the Silberman?

The Witness: It is marked Silberman.

The Court: And the bottom figure is the Loew figure?

The Witness: Loew square shoulder, yes, your Honor.

In the drawing of the closing of the jaws of the round shouldered element, as also illustrated on the drawing, Figs. 17, 18, 19, and 20 of the Silber-

(Testimony of Philip Lipson.)

man patent, this is merely an illustration on the sketch, an illustration of the stages in full lines, dotted lines, and these are semi-dotted lines. So what happens to this scoop when the jaws close? In the Silberman scoop we have got one stage of closing, which I believe was testified here that it is only partially closed on the tape, and that is shown in Fig. 19, leaving on the sides a little projection there, which according to the description of this patent is later on—four stages later, I believe it is shown in Fig.—

Mr. Mockabee: 32.

The Witness: Fig. 32. 558 is the lower portion of the jaw which I described here as A.

The Court: By “here” you mean Exhibit AW?

The Witness: On Exhibit AW as “A.”

Then we have a recess here where we see two other elements in there and those are indicatd as idling stages, and then there is a fourth element or scoop in there between the upper [694] part of the jaws, and that is—in the outline here is what is done at this stage on Fig. 20. It takes off these little—

The Court: You were just referring to Fig. 52 on sheet 6 of the Silberman patent?

The Witness: Yes.

The Court: Showing the two sets of jaws?

Mr. Mockabee: I believe it is Fig. 32, your Honor.

The Court: Right, Fig. 32. Now, just a minute.

(Testimony of Philip Lipson.)

Do I understand that the Silberman patent has a jaw with a curved surface?

The Witness: Yes, your Honor.

The Court: Where was that shown in the Silberman patent?

The Witness: This little thing is the curve between this line and this line, as indicated in here.

This dotted line shows a curve, which is on the back side of this here.

Mr. Mockabee: That is in Fig. 57, Mr. Lipson?

The Witness: Fig. 30.

The Court: I am referring now to your Exhibit AW purportedly of the Silberman patent where you show the jaw with a curved surface approach the leg.

The Witness: I should indicate to your Honor that this drawing here is looking at it from the top downward. In this I also show a figure where it looks as the punch moves on, as we look at the front of the machine. This is looking downward.

The Court: And you have a curved face on the jaw?

The Witness: That is correct.

The Court: Where do you find a curved face in Silberman's patent?

The Witness: Your Honor, the curve does not show in detail here.

Mr. Mockabee: I think it is better shown in Fig. 67 on sheet 10. In that figure the jaw 547 is shown in broken lines, and there is an arcuate broken

(Testimony of Philip Lipson.)

line approximately at the point where the lead line 556 terminates.

The Court: Yes, I see it.

Well, the Loew patent has a square jaw?

The Witness: Yes, your Honor.

The Court: Which comes into contact with the angular point made by the apex of the notch?

The Witness: Yes, your Honor.

The Court: The written material on Exhibit AW is your description of the operation?

The Witness: Description of the operation, and the comparison between one and the other.

Mr. Mockabee: Your Honor, may I have permission to withdraw that this afternoon and get copies made?

The Court: All right.

AW received in evidence. It may be withdrawn and handed to counsel for the purpose of preparing copies. [696]

(The exhibit referred to was received in evidence and marked as Defendant's Exhibit AW.)

Q. (By Mr. Mockabee): Mr. Lipson, are you generally familiar with the description and drawing in the patent in suit to Poux, No. '017?

A. I am familiar with it now.

Q. This patent is stated to relate to a method of making separable fasteners for zippers. Have you read carefully the description of the manner in which those elements are made?

A. Yes, I did.

(Testimony of Philip Lipson.)

Q. Will you describe the method disclosed in the description and drawing of the Poux patent, and from your experience generally in mechanical fields and in the zipper industry will you discuss the various features of that method.

The Court: Now, first of all, do you object to the description heretofore made of the Poux patent by plaintiff's expert?

Mr. Mockabee: I did not mean to give a detailed description of the method. But referring to various steps of the method, will you give your opinion as to their practicability and workability?

What is the first operation performed on the round bar 8, which is the stock material shown in the Poux drawing? [697]

The Witness: In this drawing on Fig. 2, there is a strip and arrangements of tools to perform various operations on the strip, the first one of which is marked 17.

Q. (By Mr. Mockabee): What is that tool for?

A. 17, it isn't shown in detail, but from what I have seen of the position of the strip, this is undoubtedly the punch that forms the recession in the strip.

Q. Do you mean the recess 6?

A. The recess 6 on Fig. 18.

Q. Below the recess 6, on the bar 8 is a projection 5; do you see that? A. Yes.

Q. Can you tell me how that is formed from the disclosure in Poux and what the result would be in following the method as disclosed by Poux?

(Testimony of Philip Lipson.)

A. This particular function of the punch and die forming the recess and the projection, is that what you are asking?

Q. At this moment, yes, just the recess and the projection.

A. Poux does not show at all, to the best of my knowledge, and I looked for it—he does not show on Fig. 2 or in any other drawing the reciprocating punch at the bottom to form the projection.

Q. Is it necessary to have a reciprocating punch at the [698] bottom to form such a projection?

A. It is if you want it in a definite shape.

The Court: Well, we have been going since 9:30. We will take our recess at this time.

(Recess taken.) [699]

The Court: You may proceed.

Q. (By Mr. Mockabee): In forming the recesses and projections on zipper scoops, in the finished product what is the relative depth of the recess and the degree of the projection?

A. The recess is approximately, in volume of metal removed from it and in size, approximately 25 per cent larger than the projection.

Q. Are you speaking of general zipper manufacture or your own particular product?

A. That is correct, general zipper manufacture.

The Court: Will you read that answer?

(Answer read as follows: “A. The recess is approximately, in volume of metal removed from it and in size, approximately 25 per cent larger than the projection.”)

(Testimony of Philip Lipson.)

Q. (By Mr. Mockabee): When you say "metal removed," is metal actually removed from the strip?

A. It is not removed. It is pushed up and the metal is pushed up into the recess of the punch that forms the projection.

Q. In other words metal is displaced rather than removed?

A. Displaced rather than removed, correct.

Q. In your examination of the disclosure in Poux '017 do you have any observations to make with respect to the question previously asked?

A. Yes. In Figure 1-A of the Poux patent '017, the recess is shown with a dotted line.

The Court: 6.

The Witness: 6, correct. The projection is shown in a full line with a little shading on the side to indicate that it is semi-spherical in shape. And that is No. 5.

In this figure it shows approximately the same size of the projection as the recession.

Now, from my experience the heavier the rod the more metal is required to be displaced because in pushing up metal and displacing it the molecules in there are reacted in a way similar to an explosion and that is—it doesn't go vertically upward but it also goes sideways and therefore, for instance, in the strip used by our own method we use a size which is 32 thousandths thick by 120 wide.

Q. (By Mr. Mockabee): Size of what?

(Testimony of Philip Lipson.)

A. Of the metal used.

The Court: Metal strip.

The Witness: Metal strip. In pushing up a projection by displacing the metal of the recession in that thickness it requires 25 per cent more of the metal to be pushed up, to be displaced from the recession and the volume of metal [701] that goes into the projection.

Q. (By Mr. Mockabee): You mentioned thicker.

A. In a heavier rod such——

Q. Just a moment, please. You mentioned thicker strips. Have you actually experimented with strips of different thicknesses?

A. Not in connection with zippers; in connection with other stamping jobs.

Q. Stamping or metal punching?

A. That is correct.

Mr. Leonard Lyon: If your Honor please, it is not quite clear to me. Is the witness to confine his comments in response to the preceding question of the disclosures of the drawing or is he to comment and include in his answer reference to the written specification?

The Court: I can find no objection to the question and the answer. If you want to cross examine him on the specification later on you may.

Mr. Leonard Lyon: I can eventually but I thought he was asked to comment on the specification too in the question.

The Court: Well, even if he didn't it is not a matter for objection.

(Testimony of Philip Lipson.)

Mr. Leonard Lyon: The question is not very clear.

The Court: Do you want to call attention to some part of the specification in Poux at this time?

Mr. Leonard Lyon: What I have in mind, of course, in connection with the formation of the projections, are lines 10 to 12 on column 2 of page 1.

I understood the witness to say there was no showing in the drawing of how the projections were formed.

The Court: Reference is made to a die 10 being provided with a recess 18 to receive the projection.

Q. (By Mr. Mockabee): With regard to that reference by Mr. Lyon, Mr. Lipson, do you note in Figure 2 of the drawing a recess stated to be 18 in the specification by having a lead line which leads to the top face of the block 10? Do you see in the drawing a recess 18?

Mr. Leonard Lyon: I think that question is indefinite. If the witness can include the Figure 6 in his answer I would have no objection.

The Court: Objection overruled. He has been asked about Figure 2.

The Witness: Shall I answer the question, your Honor?

The Court: Yes.

The Witness: In the drawing Figure 2, what is indicated as 18, is the die to receive the metal displaced or it is the reciprocating part to No. 19 which forms the keyhole but not to form the recess.

(Testimony of Philip Lipson.)

The recess in the discription on page 1, column 2, I believe it was lines 10 to 12—— [703]

Mr. Leonard Lyon: That is right.

The Court: 10 to 13.

The Witness: 10 to 13. It shows an opposite side of the rod a projection 5 is formed, the die 10 being provided with a recess 18. But in the drawing the recess 18 is opposite—that is underneath the keyhole punch 19 and not underneath the recess punch 17.

Q. (By Mr. Mockabee): Well, Mr. Lipson, the numeral 18 is located there but its lead line extends to a point before the keyhole slot 19a to a surface of the member 10 on the top side thereof? Do you see that? A. The keyhole slot has a——

Q. No, please.

The Court: We are wasting a lot of time on this. This is a matter which the court can look at and read and I don't think you are going to assist me very much with it.

Q. (By Mr. Mockabee): Is in Figure 2 there shown a semi-circular or hemispherical, rather, recess 18? A. Yes.

Q. Where?

A. In Figure 2 there is also a pointer to 19a.

Q. No, Mr. Lipson, I am afraid you are confusing the question.

The keyhole slot—I think you are confusing the keyhole slot with what is referred to as the recess 18. Do you see [704] the lead line extending from the numeral? A. Yes.

(Testimony of Philip Lipson.)

Q. Does that lead to a hemispherical recess?

A. No.

Q. In your experience with machine tools and punches, particularly, if you with a punch create a recess on one side of a piece of metal stock, approximately the thickness such as that used in making zippers, will a projection of an equal size be formed on the opposite side of that piece of stock? A. No. [705]

The Court: I notice in Poux '017—this is a small matter—but the die 17 which comes down and makes the recess is so constituted that the recess is made in the upper portion of the stock of the rod going through, and the projection comes out the bottom side. Of course after that projection was made on the bottom, whatever kind it was, there would have to be a channel in the base to let that projection move along, or your rod wouldn't be fitting level on the base when your cut-offs and other punches came down on the next operation, is that right?

The Witness: There is one, your Honor.

The Court: A recess?

The Witness: Yes, a channel. This holds the rod here, this part here, and then there is a recessed channel here in which this travels.

The Court: I see.

Well, that wouldn't give you as good a base for your rod as when the operation is reversed as in Silberman and your structure, where the recess is

(Testimony of Philip Lipson.)

made underneath the sheet and projects above, where it is not in the way, is that right?

The Witness: Correct.

The Court: However, a skillful mechanic would be able to reverse a male and female die, wouldn't he, without any trouble?

The Witness: But it involves reversing the whole [706] apparatus. Other functional things have to be changed, too.

Q. (By Mr. Mockabee): Referring to the key-hole slot indicated at 20 in the bar 8, immediately to the right of the recess 6——

The Court: Fig. 2?

Mr. Mockabee: In Fig. 2 of the Poux patent.

Q. ——can you describe how that is formed, by what means that is formed?

A. The punch 19 is shaped in the form of a key-hole slot.

The Court: We are wasting time. This is all covered. It has been covered by testimony. And in addition the court can see what happens.

If you have something new or different, all right; but I don't see that there is any sense in just a repetition of how this operates. If you want him to criticize the operation, or something, all right.

Mr. Mockabee: My next question was directed to that, your Honor.

The Court: You can ask leading questions to cover some of this.

Q. (By Mr. Mockabee): In the formation of

(Testimony of Philip Lipson.)

the key-hole slot, will the sides of the bar 8 remain parallel? A. No.

Q. What occurs? [707]

A. The displacement of the metal that is necessary will not only have a downward vertical movement, but it will also affect the sides, in other words the molecules are shocked and spread toward the sides, as well as downward, and the metal, unless it is held firmly by something on the sides, will expand sideways.

Q. Will that be reflected in a difference in the outside shape of the element? A. Definitely.

Q. Creating a bulge? .

A. Creating a bulge.

The Court: To a lesser degree does that same kind of a bulge occur with the strip metal of the size that you use.

The Witness: Yes, it does.

The Court: But to a much lesser degree?

The Witness: To a much lesser degree. We figure on a longitudinal expansion, in figuring out the movement of the metal forward, we expect that the final stage will have 55/1000 length of the movement between one and the next movement. Our movement is actually only $53\frac{1}{2}$ thousandths, because we anticipate the longitudinal expansion of $11\frac{1}{2}$ thousandths by the impression of the punch. We do not punch a key-hole slot.

The Court: I know.

The Witness: By the impression alone we do also [708] experiment——

(Testimony of Philip Lipson.)

The Court: "Expect" you mean, instead of "experiment"?

The Witness: Yes, we expect an expansion sideways of 5 to 6 thousandths and in our work we have found it to be that way.

Q. (By Mr. Mockabee): As the——

The Court: How much longitudinally?

The Witness: $1\frac{1}{2}$ thousandths.

The Court: All right.

The Witness: If I may remark, your Honor, that depends on the hardness of the stock used. In softer stock it expands more, and in harder stock it expands less.

Q. (By Mr. Mockabee): You will note in Fig. 2 of Poux that side notches are formed by the punches 21, as has previously been described in other testimony? A. Yes, I do.

Q. Those notches are shown opposite the forward or smaller end of the key-hole slot 20, is that not true? A. That is correct.

Q. What happens to the key-hole slot 20 when the cutter 23—— A. 21.

Q. (Continuing) ——23 severs the end element from the bar?

The Court: It is cutter 21, isn't it? [709]

The Witness: You asked me about the key-hole—the notching. That is 21. The cutter 23——

Q. (By Mr. Mockabee): I said after the notching has been performed by the cutters 21, the stock is then moved forward one step, is that not true?

A. That is correct.

(Testimony of Philip Lipson.)

Q. Showing the notches opposite the forward ends of the key-hole slot 20, is that true?

A. That is correct.

Q. When the cutter 23 moves laterally into engagement with the bar to sever the end element, what happens to the key-hole slot 20?

A. Will you please clarify the question? It is not clear to me. What has the notching to do——

Q. The notching has been done.

The Court: Read the question. I think it is pretty clear if you will follow it closely. His first question was not. The second one is. He is talking now about the lateral cut-off.

Read it again, Mr. Reporter.

(Question read by the reporter as follows:

“Q. When the cutter 23 moves laterally into engagement with the bar to sever the end element, what happens to the key-hole slot 20?”)

The Witness: The metal being pushed with cutter 23 [710] against the reciprocating part there, which is an anvil, I don't see the marking on that anvil—or is there a marking?

Q. (By Mr. Mockabee): That is marked 25.

A. That stock will be squeezing the key-hole. There is nothing in that to prevent it from being squeezed. You are pushing the stock against an anvil.

Q. Will the key-hole aperture tend to collapse?

A. To collapse.

Q. When the cutter 23 is operated, is there any

(Testimony of Philip Lipson.)

movement of the end element during the cutting operation?

A. The back part of it, which is being severed, will move in the same direction as the cutter 23 does, and it will swing around until it is severed from the stock. It will have not only a swinging motion, but when the space between is cut approximately two-thirds, the balance of one-third, the metal tears off; in other words, you have a cutting function and it comes to a point where the metal tears apart, and then there is also a movement away from the two separate parts.

Q. Do you mean longitudinally of the bar?

A. Longitudinally.

Q. And of the end element?

A. The bar being held rigidly then can't move back, therefore the forward part will be moved against the cord and it may sever the cord.

The Court: You are a pretty good mechanic, aren't you? You wouldn't have any trouble in putting another unit or gadget or device on there to hold that unit firmly in position while the cutting took place, would you?

The Witness: You couldn't hold it.

The Court: Why not?

The Witness: Because the mere formation of it, if I may explain to your Honor the way we are operating, there is a stripper punch that we call it, a punch, and when the metal is cut, and that is flat metal which doesn't take much in cutting, as much as square rod, when it is cut down there is

(Testimony of Philip Lipson.)

a bending movement downward. The forward scoop that is being attached is stationary. It is the back part that is moved downward, and it has room to expand. In this operation here the forward member is the one that is being moved.

The Court: All right. But couldn't you as a mechanic take this patent and put a device in to hold that forward member solidly in position while the cutting took place?

The Witness: Your Honor, in going through this patent and the figure and the method of operation, I have found that the sequence of operations—it has a sound theory, but what one would have to do, just like I stated before, in order to build a good apparatus, is junk the one that is shown and build from scratch.

The Court: What I am getting at is this. When you studied this patent it would become immediately apparent that [712] something like this would have to be done, wouldn't it?

The Witness: In this particular position.

The Court: That is right. Regardless of what else would have to be done, couldn't you call a mechanic in and tell him to construct—show him how to construct a device that would hold that unit firmly in place while the cutting went on?

The Witness: The while procedure would have to be changed then. The way this is shown, taking just the last operation of severing and closing the jaws, you couldn't do it, unless the whole procedure was reversed.

(Testimony of Philip Lipson.)

The Court: I am not much of a mechanic, but the cutting element 23 moves there laterally, is that right?

The Witness: Yes.

The Court: Is there any reason why some sort of a jaw couldn't be inserted in between the cutting element 23 and the jaw that is shown, 28, that would move forward ahead of the cutting tool 23 from either side by some cam action, and grasp that unit from either side before the cutting 23 or or the jaw clamping shown there by 28 action took place?

The Witness: May I answer that?

The Court: Yes.

The Witness: If this was a movement, a cutting that was in the form of a chisel where a sharp edge goes in, then that could be held from moving sideways, but in that case it would [713] move to a much greater extent longitudinally. Whenever an element is severed in this type, one piece has to move. I was thinking when I was looking at this method here, supposing we reversed the issue and had the cutting done ahead of this here, and keep the anvil against the forward movement, but in that case we would have to provide a means for bending this stock, and in a bar or a square rod there would be no possibility of doing that. [714]

Q. (By Mr. Mockabee): You base your observation with regard to the use of a bar or square rod on the fact that the height and width are the same? A. Yes.

(Testimony of Philip Lipson.)

Q. And that a certain height or the height in a zipper element and the width with regard to the stock is considered different? A. Yes.

Q. Basing your answer on the dimensions of standard zippers which I believe are rather uniform, are they not, in the trade?

A. Yes, they are.

Q. In measurement. Is the relative size of a round bar or a square rod such that it would or would not be possible to produce the flexing or bending during the cutting operation which you state you use in your machines?

A. It would not be possible to use it.

I have a—if your Honor wants me to illustrate more, I have a die block which we use in our operation by which I may illustrate to your Honor what I mean by the bending operation when it is done in the matter in which is practiced now in all the zipper production, and that is that the forward member is stationary.

The Court: By forward member you mean the unit being attached? [715]

The Witness: Being attached is stationary. It is the back part of the rod that is being cut.

The Court: And it is allowed to move?

The Witness: It is allowed to move. It moves downward.

The Court: I understand that.

The Witness: In the die.

The Court: Yes.

Q. (By Mr. Mockabee): In your opinion, from

(Testimony of Philip Lipson.)

your mechanical knowledge and particularly your knowledge of the zipper industry, are there any other defects in the method of operation disclosed in the Poux patent referred to?

A. My method was very ably illustrated by his Honor here. No. 1, when you form a recess—a projection into a pocket and the pocket holds that projection how are you going to move the rod forward unless you lift it over the pocket, which is not shown in this method.

Now, No. 2, when you perform the other operations on this bar such as the notching the keyhole cutting what is holding the bar underneath except the projections which are based on the bottom of the, which between one projection and the other form a bridge.

Now, if you were to bounce downward a punch on a bridge there the bridge would collapse in the middle. Therefore, that bar will bend downward and it will deform the projections on which it rests and it will also bend the bar. [716]

Q. Would that result in a deformed element?

A. It would result in an apparatus which couldn't work. It would not bring the stock forward.

Q. I am not speaking of an apparatus. I am speaking of an element formed from a downwardly bent rod of stock.

A. I would say that if you could manage to bring it as far forward as to clamp it on it would be a deformed element.

(Testimony of Philip Lipson.)

The Court: All you would have to do would be to change the male and female dies to get around that, wouldn't you?

The Witness: In order to do so—in order to do that sometimes a whole change of the entire method is needed in order to accomplish that. What is done in one little preceeding operation affects all of the forward operations of that bar and therefore—I haven't gone into that, but it is quite a problem. And naturally in order to overcome this one would have to reverse the thing and put the thing on the top. That would be the first thought that comes in, but then other operations which are being performed on this rod later will be affected by this change.

Q. (By Mr. Mockabee): From your experience and from what is shown and described in the Poux patent '017, could you from that teaching follow the steps of the method shown and produce zipper elements which would function?

A. I would have to qualify this answer. From [717] the description that I read inside, which I called a theory, a skilled mechanic in the art of building machines could build a machine based on that theory.

Q. I am not speaking of a machine, Mr. Lipson. I am speaking of following the operations on the stock of the rod as described and taught by Poux, and you follow the method taught by him could you produce successfully zipper elements?

A. No.